

*United States Court of Appeals
for the Second Circuit*



APPENDIX

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No. 74-2211

United States Court of Appeals
FOR THE SECOND CIRCUIT

LOCALS 700, 743 AND 1746, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition For Review of an Order of the
National Labor Relations Board

JOINT APPENDIX

PLATO E. PAPPS

Machinists Building
Washington, D.C. 20036

MOZART G. RATNER

818 - 18th Street, N.W.
Washington, D.C. 20006

Attorneys for Petitioners

ELLIOTT MOORE

Associate General Counsel
National Labor Relations Board
Washington, D.C. 20570



ABS DUPLICATORS, INC.-1732 Eye Street, N.W.-Washington, D.C.-298-5537

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INDEX

	<u>J.A.</u> <u>Page</u>
CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES	1
CHARGE AGAINST EMPLOYER, dated September 30, 1971	2
CHARGE AGAINST EMPLOYER, dated October 16, 1972	3
CHARGE AGAINST EMPLOYER, dated June 18, 1973	4
ORDER CONSOLIDATING CASES, AMENDED COMPLAINT AND FURTHER NOTICE OF HEARING, dated July 11, 1973	5
ANSWER TO AMENDED COMPLAINT, dated July 20, 1973	11
MOTION FOR SUMMARY JUDGMENT, dated July 23, 1973	13
AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, dated July 23, 1973	16
EXHIBIT D, Agreement with Lodge 1746, dated December 1, 1971	20
EXHIBIT F, Letter to Mr. Gordon Sawyer from Pratt & Whitney Aircraft, Connecticut Operations, dated October 30, 1972	25
EXHIBIT G, Letter to Mr. Gordon Sawyer from United Aircraft, dated December 13, 1972	27
EXHIBIT H, Letter to Mr. Gordon Sawyer from United Aircraft, dated January 15, 1973	29
EXHIBIT I, Letter to Mr. James E. Vandervoort from Industrial Aircraft Lodge No. 1746 dated February 2, 1973	31

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EXHIBIT J, Letter to Joseph C. Wells, Esq. from Ratner and Driesen, P.C., dated April 2, 1973	32
EXHIBIT O, Letter to Mr. Justin Ostro from United Aircraft, dated July 13, 1973	33
ORDER TRANSFERRING PROCEEDING TO THE BOARD and NOTICE TO SHOW CAUSE, dated August 3, 1973	34
GENERAL COUNSEL'S RESPONSE TO ORDER TO SHOW CAUSE WHY RESPONDENT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED, Received August 20, 1973	35
CHARGING PARTIES' OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, dated September 14, 1973	47
MOTION FOR RECONSIDERATION, undated	51
REPLY OF UNITED AIRCRAFT CORPORATION TO GENERAL COUNSEL'S RESPONSE TO ORDER TO SHOW CAUSE WHY RESPONDENT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT BE GRANTED, dated October 5, 1973	63
AFFIDAVIT IN SUPPORT OF REPLY OF UNITED AIRCRAFT CORPORATION TO GENERAL COUNSEL'S RESPONSE TO ORDER TO SHOW CAUSE WHY RESPONDENT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT BE GRANTED, dated October 5, 1973	69
EXHIBIT A, Letter to N. B. Morse from International Association of Machinist and Aerospace Workers, dated July 24, 1973	71
REQUEST FOR SPECIAL PERMISSION TO FILE MOTION TO TAKE OFFICIAL NOTICE AND RECEIVE NEW EVIDENCE, dated January 28, 1974	73
MOTION TO TAKE OFFICIAL NOTICE AND RECEIVE NEW EVIDENCE, dated January 28, 1974	77

AFFIDAVIT, dated January 25, 1974	80
OPINION AND AWARD, dated December 18, 1973	83
EXHIBIT B, Letter to Mr. George H. Darrell from United Aircraft, dated January 18, 1974	103
CHARGING PARTIES' RESPONSE TO RESPONDENT'S REQUEST FOR SPECIAL PERMISSION, ETC. AND CROSS-MOTION OF CHARGING PARTIES TO RECEIVE NEW EVIDENCE, dated February 19, 1974	104
AFFIDAVIT, dated February 15, 1974	106
EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS, dated November 24, 1971	108
MEMORANDUM IN SUPPORT OF RESPONSE TO RESPONDENT'S MOTION TO RECEIVE ADDITIONAL EVIDENCE AND CHARGING PARTIES' CROSS-MOTION TO SUBMIT ADDITIONAL EVIDENCE, dated February 19, 1974	111
Decision and order, NLRB, Sep. 3, 1974	121

JOINT APPENDIX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Lodges 700, 743, & 1746,
International Association of
Machinists & Aerospace Workers,
AFL-CIO.

Case Nos.: 1-CA-7890
1-CA-8626

9.30.71 Charge filed in Case No. 1-CA-7890

10.16.72 Charge filed in Case No. 1-CA-8626

5.31.73 Complaint and Notice of Hearing, dated

6. 5.73 Employer's Answer to Complaint, dated

6. 7.73 Employer's Motion for a more specific statement of complaint, dated

6.13.73 General Counsel's reply and opposition to Employer's motion for a more specific statement of complaint, dated

6.13.73 Amended charge filed in Case No. 1-CA-7890

6.26.73 Acting Regional Director's telegram postponing hearing indefinitely, dated

7.11.73 Acting Regional Director's Order consolidating cases, amended complaint and further notice of hearing, dated

7.20.73 Answer to amended complaint, dated

7.23.73 Employer's motion for summary judgment, dated

8. 3.73 Order transferring proceeding to the Board and Notice to Show Cause, dated

8.20.73 General Counsel's response to Order to Show Cause why Employer's motion for summary judgment should not be granted, dated

9.14.73 Petitioners' Opposition to Employer's motion for summary judgment, dated

10. 5.73 Employer's Reply to General Counsel's response to Order to Show Cause why Employer's Motion for summary judgment should not be granted, dated

10.18.73 Employer's request for special permission to file reply, dated

1.28.74 Employer's request for special permission to file motion to take official notice and receive new evidence, dated

1.28.74 Employer's Motion to take official notice and receive new evidence, dated

2.19.74 Petitioners' response to Employer's request for special permission, etc., and cross-motion to receive new evidence, dated

9. 3.74 Board's Decision and Order, dated September 3, 1974

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Please file an original and 4 copies of this charge with NLRB
in the appropriate region in which the alleged unfair labor practice
occurred or is continuing.

Date Rec'd.	1-CA-7890
Date Fld.	September 30, 1971

a. Name of Employer: CALICO Aircraft Corporation, Pratt & Whitney Division, Hamilton Standard Division	b. Employer's address: 400 Main Street, East Hartford, Connecticut	c. Employer's telephone number: 06118	d. Number of Workers Involved: APPENDIX, Part II
e. Type of Establishment (Factory, mine, wholesaler, etc.): Factory	e. Identity Principal Product or Service: Aircraft products and electronic devices		
f. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of sections 8(a), subsections (1) and (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.			
g. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)			
<p>1. Since on or about the third week of June, 1971, and specifically on July 7, 1971, at respondent's Hamilton Standard Windsor Locks plant, respondent's supervision, including General Foreman Al Downing and Foreman Dick Owens, discriminated against Union steward Albert J. Weingarten and subjected Weingarten to verbal abuse, discrimination, surveillance, harassment, and more onerous working conditions because of Weingarten's acceptance of the position of Union steward, and participation in protected concerted activity.</p> <p>2. On April 1, 1971, at respondent's Pratt & Whitney Division, Middletown Plant, respondent's supervision, including General Foreman Pete Laskarin and Foreman Pete Valenti, leveled false accusations against the Union and unlawfully attempted to undermine said Union in the eyes of the bargaining unit employees.</p>			

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)	4a. Address (Street and number, city, State, and ZIP code)	4b. Telephone No.
Lodge 700 IAMAW	Lodge 743 IAMAW	346-5149
Lodge 743 IAMAW	Lodge 700 - Middletown, Conn. 06457	623-8255
4c. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)		
IAMAW		

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By <u>Mosart G. Retner</u> (Signature of representative or person filing charge)	Attorney (Title, if any)
818 - 18th Street, N. W. Washington, D. C. 20006	(202) 298-8306 (Telephone number)
September 27, 1971 (Date)	

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18,
SECTION 1001)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

1-CA-8626

Date Filed

October 16, 1972

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer United Aircraft Corp. - Pratt & Whitney Division	b. Number of Workers Employed Approx. 20,000	
c. Address of Establishment (Street and number, city, State, and ZIP code) 400 Main Street, East Hartford, Conn. 06108	d. Employer Representative to Contact	e. Phone No.
f. Type of Establishment (Factory, mine, wholesaler, etc.) Factory	g. Identify Principal Product or Service Aircraft Engines and Products	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, (List subsections) and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.		

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Respondent unlawfully refuses to bargain by (1) its failure and refusal to furnish the Union information in respondent's possession which is relevant and indispensable to effective and intelligent presentation of grievances; (2) its refusal on June 7, 1972, by East Hartford Foreman Otto Heller, to summon a steward pursuant to the request of employee James Rizner; and (3) its attempts, on June 15 and June 16, 1972, by East Hartford Foreman Edward Pitney to bypass the Union and individually discuss and settle the grievance of employee Ken Roberge. On or about August 13, 1972, during the first step of a grievance filed by employee Bruce Ladd, Foreman J. Fogg unlawfully refused Steward Leopold Polliardi's requests for information, and on or about August 29, 1972, at the second step of the Ladd grievance, Plant Manager John Phelps unlawfully refused Union requests for information. On or about June 15 and June 16, 1972, during the first step of a grievance filed by employee Ken Roberge, East Hartford Foreman Edward Pitney unlawfully refused Steward Paul Kelly's requests for information, and on or about July 3, 1972, during the second step of the Roberge grievance, Plant Manager John Phelps unlawfully refused Union requests for information.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number) Lodge 1746, International Association of Machinists and Aerospace Workers, AFL-CIO
--

4a. Address (Street and number, city, State, and ZIP code) East Hartford, Connecticut 06118	4b. Telephone No. 203 568-3000
--	-----------------------------------

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) International Association of Machinists and Aerospace Workers, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Stephen P. Gordon
(Signature of representative or person filing charge)

Attorney
(Title, if any)

Address 818 - 18th Street, N.W. 298-8306
(Telephone number)
Washington, D.C. 20006

Oct. 13, 1972
(Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

RECEIVED JUN 21 1973		Form Approved Budget Bureau No. 64-R001.12
UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD		
AMENDED CHARGE AGAINST EMPLOYER		
INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.		DO NOT WRITE IN THIS SPACE
a. Name of Employer United Aircraft Corporation, Pratt & Whitney Division; Hamilton Standard Division b. Number of Workers Employed Approx. 24,000		Case No. 1-CA-7890
c. Address of Establishment (Street and number, city, State, and ZIP code) 400 Main Street, East Hartford, Connecticut 06118 d. Employer Representative to Contact e. Phone No.		Date Filed June 18, 1973
f. Type of Establishment (Factory, mine, wholesaler, etc.) Factory g. Identify Principal Product or Service products and electronic devices		
b. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.		
2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)		
1. Since on or about the third week of June, 1971, and specifically on July 7, 1971, at respondent's Hamilton Standard Windsor Locks plant, respondent's supervision discriminated against Union steward Albert J. Weingarten and subjected Weingarten to verbal abuse, discrimination, surveillance, harassment, and more onerous working conditions because of Weingarten's acceptance of the position of Union steward, and participation in protected concerted activity.		
2. On April 1, 1971, at respondent's Pratt & Whitney Division, Middletown Plant, respondent's supervision leveled false accusations against the Union and unlawfully attempted to undermine said Union in the eyes of the bargaining unit employees.		
By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.		
3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number) Lodge 700 IAMAW Lodge 743 IAMAW		
4a. Address (Street and number, city, State, and ZIP code) Lodge 700 - Middletown, Conn. 06457 Lodge 743 - Windsor Locks, Conn. 06096		4b. Telephone No. 346-5149 623-8255
5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) IAMAW		
6. DECLARATION I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.		
By <u><i>/s/ Mozart G. Retner</i></u> (Signature of representative or person filing charge) 818 - 18th Street, N. W. Address Washington, D. C. 20004		Attorney _____ (Title, if any) (202) 296-8306 (Telephone number)
June 18, 1973 (Date)		
WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)		

RECEIVED
JUL 1 1973
UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

*
In the Matter of

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION;
HAMILTON STANDARD DIVISION)

and

* CASE NO. 1-CA-7890

LODGE 700 and 743, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION)

and

* CASE NO. 1-CA-8626

LODGE 1746, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

*
ORDER CONSOLIDATING CASES, AMENDED
COMPLAINT AND FURTHER NOTICE OF HEARING
It having been charged in Case No. 1-CA-7890 by Lodge 700,
International Association of Machinists and Aerospace Workers, AFL-CIO (herein
Lodge 700), P. O. Box 1082, Middletown, Connecticut 06459 and by Lodge 743,
International Association of Machinists and Aerospace Workers, AFL-CIO (herein
Lodge 743), P. O. Box 25³, Windsor Locks, Connecticut 06036 and in
Case No. 1-CA-8626 by Lodge 1746, International Association of Machinists and
Aerospace Workers, AFL-CIO (herein Lodge 1746), 357 Main Street, East Hartford,
Connecticut 06196, that United Aircraft Corporation (Pratt & Whitney Division;
Hamilton Standard Division) and United Aircraft Corporation (Pratt & Whitney
Division) in Case Nos. 1-CA-7890 and 1-CA-8626, respectively, 400 Main Street,
East Hartford, Connecticut 06118 (herein sometimes referred to as Respondent),
have engaged in and are engaging in unfair labor practices affecting commerce
as set forth and defined in the National Labor Relations Act, as amended, 29
U.S.C. Sec. 151, et seq. (herein called the Act), the General Counsel of the
National Labor Relations Board (herein called the Board), by the undersigned

Acting Regional Director for the First Region having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 8, as amended, that these cases be, and they are hereby, consolidated.

Said cases having been consolidated for hearing, and Complaint having issued in Case No. 1-CA-8626 on May 31, 1973, the General Counsel of the Board, on behalf of the Board, by the undersigned Acting Regional Director, hereby issues this Amended Complaint and Further Notice of Hearing pursuant to Section 10(b) of the Act and Sections 102.15 and 102.17 of the Board's Rules and Regulations, Series 8, as amended.

1. a. The Charge in Case No. 1-CA-7890 was filed by Lodge 700 and Lodge 743 on September 30, 1971 and a copy served upon Respondent on September 30, 1971.

b. An Amended Charge in Case No. 1-CA-7890 was filed by Lodge 700 and Lodge 743 on June 18, 1973 and a copy thereof served upon Respondent on June 18, 1973.

c. The Charge in Case No. 1-CA-8626 was filed by Lodge 1746 on October 16, 1972 and a copy thereof served upon Respondent on October 16, 1972.

2. Respondent, a Delaware corporation with its principal office at East Hartford, Connecticut, is engaged in the manufacture and distribution of aircraft engines, helicopters, aircraft accessories and parts, electronic devices and components thereof. Respondent operates several plants in the State of Connecticut, including plants located at East Hartford, Manchester, Middletown and Southington (Pratt & Whitney Division), and at Windsor Locks and Broad Brook (Hamilton Standard Division). In addition, Respondent operates plants in the States of Florida, New York, California and the Commonwealth of Pennsylvania. In connection with its operations in the State of Connecticut, Respondent annually purchases and receives from outside the State of Connecticut goods and materials valued in excess of \$1,000,000, and also ships from its plants in the State of Connecticut to points and places outside the State of Connecticut goods and materials valued at in excess of \$1,000,000.

3. The aforesaid Respondent is and has been engaged in commerce within the meaning of the Act.

4. Lodges 1746, 700 and 743 are each a labor organization within the meaning of Section 2(5) of the Act.

5. At all times material herein, the following named person occupied positions set opposite their respective names, and have been and are now agents

of the Respondent, acting on its behalf, and are supervisors within the meaning of Section 2(11) of the Act.

Edward Pitney	- Foreman Department 34
John H. Phelps	- Assistant to Manufacturing Manager
Otto Heller	- Foreman Department 27
Robert Downing	- General Foreman Ground Support Equipment Department
Richard Owens	- Foreman Department 183
Peter Valenti	- Foreman Department 4011
Peter Laskarin	- General Foreman Departments 4010 and 4011

6. All production and maintenance employees of the United Aircraft Corporation, Pratt & Whitney Division, East Hartford, Connecticut, at the East Hartford plant (including the DE Lab and the Willgoos Lab), including inspectors, crib attendants, material handlers, factory clerks and working leaders, but excluding timekeepers, engineering and technical employees, laboratory technicians, foremen's clerks, salaried office and clerical employees, medical department employees, first-aid employees, plant protection employees, executives, plant superintendents, division superintendents, general foremen, foremen, assistant foremen, group supervisors, watch engineers, and all other supervisors as defined in the National Labor Relations Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

7. At all times material Lodge 1746, the Union, has been the representative for the purposes of collective bargaining of a majority of the employees in the said unit, and, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in the said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

8. Commencing on or about June 7, 1972 and at all times thereafter, Respondent United Aircraft did refuse, and continues to refuse, to bargain collectively with, and accord full statutory recognition to, Lodge 1746, as the exclusive collective bargaining representative of the employees in the unit described above in Paragraph 6 in that:

a. On or about June 7, 1972, Respondent by Foreman Otto Heller, Department 27, at its East Hartford plant, after several requests refused to provide employee James Rizner with the services and presence of a Shop Steward in connection with his grievance.

b. On or about June 15, 16, July 3 and 20, 1972, and at all times thereafter, Respondent has refused to furnish to Lodge 1746 the standards used by foremen for merit ratings, as well as other information, records, reports and notebooks made and maintained by Respondent which were relevant and necessary to the intelligent analysis and presentation of grievances by Lodge 1746 and to the proper functioning and normal operation of the existing contract grievance procedure, thereby preventing, frustrating and limiting Lodge 1746's ability and capacity to effectively utilize said contract grievance procedure.

9. Since on or about July 1, 1971 and continuing to date, Respondent has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of their rights as guaranteed in Section 7 of the Act, by the following acts and conduct:

Under pretext of enforcing plant rules concerning employee conduct on company time and property, Respondent United Aircraft has followed and applied and is continuing to follow and apply at its various plants a continuing, deliberate and historical pattern of unlawful discrimination and harassment of Charging Parties' stewards, committeemen, officers, agents and representatives in order to discourage, inhibit, disrupt and limit said representatives, officers and agents from freely and effectively engaging in protected activity and otherwise degrade and disparage said agents, representatives and officials and the Charging Unions themselves in the eyes of the employees of Respondent United Aircraft, to wit:

a. Since on or about July 1, 1971 and continuing thereafter, Respondent, by General Foreman Robert Downing and Foreman Richard Owens, in or about Department 183, Hamilton Standard Division, Windsor Locks Plant, harassed union and shop stewards of Lodge 743 by subjecting them to excessively close surveillance and supervision and unreasonably and discriminatorily applied against them because of their union status and activity plant work rules relative to employee communications and conduct on company time and property.

b. Since on or about July 1, 1971, Respondent, by Foreman Richard Owens, in or about Department 183, Hamilton Standard Division, Windsor Locks Plant,

harassed Union and shop stewards of Lodge 748 because of their union status and activity by subjecting them to onerous jobs and undesirable working conditions.

c. On or about April 14, 1971, Respondent Pratt & Whitney, by its General Foreman Peter Laskarin and Foreman Peter Valenti, at its Middletown Plant, lied to employees concerning the efforts and activities of Lodge 700 regarding the retirement of an employee for the purpose of undermining and degrading employees' support of Lodge 700.

10. Respondent Hamilton Standard did on or about July 1, 1971, subject Albert Weingarten to onerous jobs and undesirable working conditions at its said Hamilton Standard, Windsor Locks Plant.

named

11. Respondent Hamilton Standard did subject Albert Weingarten/above in Paragraph 10 to onerous jobs and undesirable working conditions for the reason that he joined or assisted the Union or engaged in other concerted activities, including service as a Union steward, for the purpose of collective bargaining, or other mutual aid or protection.

12. By the acts described above in Paragraph 10, carried out for the reason set forth in Paragraph 11 above, Respondent did discriminate and is discriminating in regard to the hire or tenure or terms or conditions of employment of the employee named above in Paragraph 10, thereby discouraging membership in the Union, and Respondent thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

13. By the acts described above in Paragraph 8, Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

14. By the acts described above in Paragraphs 8, 9, 10 and 11 and by each of said acts, Respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

J.A. 10

15. The activities of Respondent, described above in Paragraphs 8, 9, 10 and 11, occurring in connection with the operations of Respondent, described above in Paragraphs 2 and 3, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

16. The acts of Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3) and (5) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 30th day of October, 1973 at 10:00 o'clock in the forenoon, Eastern Standard Time, at Room 134, U.S. Courthouse, Federal Building, 450 Main Street, Hartford, Connecticut a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Acting Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of its Answer, Respondent shall serve a copy thereof on each of the other parties.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Acting Regional Director for the First Region, on this 11th day of July, 1973, issues this Order Consolidating Cases, Amended Complaint and Further Notice of Hearing against United Aircraft Corporation (Pratt & Whitney and Hamilton Standard Divisions), Respondent herein.

Ernest Modern

Ernest Modern, Acting Regional Director
National Labor Relations Board
First Region
Boston, Massachusetts

RECEIVED

JUL 23 1973

J.A. 11

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of

*

*

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION;
HAMILTON STANDARD DIVISION)

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and

CASE NO. 1-CA-7890

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ANSWER TO AMENDED COMPLAINT

ANSWER TO AMENDED COMPLAINT

Comes now the Respondent, United Aircraft Corporation, and, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, hereby files its answer to the amended complaint in the above-captioned consolidated cases:

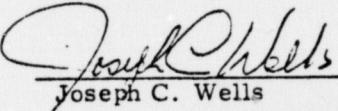
1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted.
5. Paragraph 5 is admitted.

6. Paragraph 6 is admitted.
7. Paragraph 7 is admitted.
8. Paragraph 8 is denied.
9. Paragraph 9 is denied.
10. Paragraph 10 is denied.
11. Paragraph 11 is denied.
12. Paragraph 12 is denied.
13. Paragraph 13 is denied.
14. Paragraph 14 is denied.
15. Paragraph 15 is denied.
16. Paragraph 16 is denied.

AFFIRMATIVE DEFENSE

The allegations of the complaint raise issues in dispute between the Respondent and Charging Parties which have either already been submitted to arbitration (paragraph 8) or are otherwise resolvable through the voluntary contractual provisions of the parties' collective bargaining agreements (paragraphs 9, 10 and 11).

Respectfully submitted,


Joseph C. Wells


Michael J. Bartlett
1225 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorney for Respondent,
United Aircraft Corporation

July 20, 1973

RECEIVED

J.A. 13

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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

* * * * *

In the Matter of

*

*

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION;
HAMILTON STANDARD DIVISION)

*

*

*

*

and

*

CASE NO. 1-CA-7890

*

*

LODGES 700 and 743, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO

*

*

*

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION)

*

*

*

and

CASE NO. 1-CA-8626

*

*

LODGE 1746, INTERNATIONAL ASSO-
CIATION OF MACHINISTS AND AERO-
SPACE WORKERS, AFL-CIO

*

*

*

* * * * *

MOTION FOR SUMMARY JUDGMENT

Comes now United Aircraft Corporation, Respondent herein,
and hereby moves the National Labor Relations Board for summary
judgment in the above-captioned consolidated cases. For reasons in
support of this motion, the Board is respectfully directed to the
attached memorandum of law, the affidavit of Nathaniel B. Morse,
and the following showing of material facts concerning which there
is no genuine issue:

1. The Board has authority to grant Respondent's motion
under Rule 56, Fed. R. Civ. Proc. and Sections 102.24 and 102.50
of the Board's Rules and Regulations.

2. A consolidated complaint in this matter was issued by the Board's General Counsel on July 11, 1973 and Respondent filed a timely answer on July 20, 1973 (Affidavit, Exhibits A and B).

3. The parties to this unfair labor practice proceeding are identical to those in United Aircraft Corporation, 204 NLRB No. 133 (Decided July 10, 1973).

4. The allegations of unlawful conduct are set forth in paragraphs 8, 9, 10 and 11 of the complaint (Affidavit, Exhibit A).

5. The disputes between the parties raised by the allegations of paragraph 8 of the complaint were submitted to arbitration by the parties on May 24, 1973, and Respondent and Charging Parties are now awaiting the arbitrator's resolution of those disputes (Affidavit, pp. 2-3).

6. The disputes raised by the allegations of paragraphs 9 (a), (b), 10 and 11 of the complaint involve a conflict between a single employee at Respondent's Hamilton Standard Division and the employee's immediate supervisors, which occurred on or about July 1, 1971. No grievance has ever been filed over this dispute (Affidavit, p. 3).

7. The controversy embodied in the allegation of paragraph 9 (c) of the complaint involves the content of disputed conversations on or about April 14, 1971, between a single employee at Respondent's Middletown facility and his immediate supervisors. No grievance has ever been filed over this dispute (Affidavit, p. 3).

8. All disputes between the Respondent, the Union or any employee concerning the interpretation, application or compliance with the parties' collective bargaining agreement and affecting wages,

hours or working conditions may be submitted to the parties' grievance procedures and, if necessary, referred to arbitration either by one of the parties or by mutual agreement of both parties (Affidavit, pp. 3-4).

9. On July 13, 1973, the Respondent invited the Union to meet with it as soon as possible in order to resolve, inter alia, the outstanding disputes between the parties which are set forth in the allegations of paragraphs 9, 10 and 11 of the complaint. The Respondent proposed in this letter that the parties make an earnest effort to resolve these disputes through the existing grievance and arbitration process or through a special dispute-solving mechanism to which the parties might mutually agree (Affidavit, p. 4).

WHEREFORE, the Respondent moves the Board for an order dismissing the complaint herein, retaining jurisdiction for the sole purpose of entertaining an appropriate and timely motion for further consideration on a proper showing that these disputes have not been resolved with reasonable promptness through grievance and arbitration procedures or that such procedures have not been fair and regular.

Respectfully submitted,

Joseph C. Wells MSB
Joseph C. Wells

Michael J. Bartlett

Michael J. Bartlett
1225 Connecticut Avenue, N.W.
Washington, D.C. 20036

Counsel for Respondent,
United Aircraft Corporation

July 23, 1973

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

* * * * *

In the Matter of *

UNITED AIRCRAFT CORPORATION *
(PRATT & WHITNEY DIVISION; *
HAMILTON STANDARD DIVISION) *

and *

LODGES 700 and 743, INTERNATIONAL *
ASSOCIATION OF MACHINISTS AND *
AEROSPACE WORKERS, AFL-CIO *

CASE NO. 1-CA-7890

UNITED AIRCRAFT CORPORATION *
(PRATT & WHITNEY DIVISION) *

and *

LODGE 1746, INTERNATIONAL ASSO- *
CIATION OF MACHINISTS AND AERO- *
SPACE WORKERS, AFL-CIO *

CASE NO. 1-CA-8626

* * * * *

AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

State of Connecticut

ss.

July 23, 1973

Nathaniel B. Morse, being first duly sworn, deposes and
says:

1. I am employed as Vice President for Industrial Relations,
United Aircraft Corporation, and am familiar with, and have personal
knowledge of the matters hereinafter referred to in this affidavit in
support of the motion for summary judgment.

2. The consolidated amended complaint herein (Exhibit A, hereto) was issued on July 11, 1973, and Respondent filed a timely answer on July 20, 1973 (Exhibit B, hereto).

3. The Union has never filed a grievance over the allegation contained in paragraph 8 (a) of the consolidated complaint to the effect that Foreman Otto Heller refused to provide employee James Rizner with the services of a shop steward. Similarly, the Union never filed a grievance over the allegations contained in paragraph 8 (b) which involve the propriety of various alleged refusals by Company representatives to produce information at several steps in the grievance procedure during the processing of the merit rating grievance of employee Kenneth Roberge. Both allegations involve disputes which were both grievable and arbitrable under the parties' then existing and current collective bargaining agreements (Exhibits C and D, hereto, Article VII, Sections 1 and 3(a)(21)-(23)).

Accordingly, since the Union's unfair labor practice charges filed on October 16, 1972 (Exhibit E, hereto) revealed that these matters were in dispute between the parties, the Company placed these matters in the grievance procedure (Exhibit F, hereto). These disputes were processed through the third and fourth steps of the grievance procedure without resolution (Exhibits G and H, hereto). Therefore, the Company proposed to submit these disputes to arbitration on January 15, 1973 (Exhibit H), and eventually, by April 2, 1973, the Union agreed that these grievances would be arbitrated

(Exhibits I and J, hereto).

A hearing was held before Arbitrator I. Robert Feinberg on May 24, 1973 (Exhibits K and L, hereto), at which all of the allegations contained in paragraph 8 of this complaint were fully and fairly litigated. These disputes are currently pending before the Arbitrator and the parties are now awaiting his resolution.

4. To the best of my knowledge and belief all of the allegations contained in paragraph 9(a), (b), 10 and 11 of the complaint involve a single employee, Albert Weingarten. The matters in dispute, to the best of my knowledge and belief, are limited to the propriety of certain conversations at the Hamilton Standard plant between this employee and supervisors Robert Downing and Richard Owens and certain work-related instructions given this employee by these supervisors -- all of which occurred on or about July 1, 1971.

The allegations of paragraph 9(c) deal solely with a dispute at the Middletown plant over the content of certain conversations on or about April 14, 1971, between employee John Smallridge and supervisors Peter Laskarin and Peter Valenti concerning that employee's retirement.

The Union has not filed any grievances concerning the disputes which comprise these allegations of the complaint.

All disputes between the Company, the Union or any employee concerning the interpretation, application or compliance with the parties' collective bargaining agreement and affecting wages,

hours or working conditions may be submitted to the parties' contractual grievance procedures and, if necessary, referred to arbitration by either party or by mutual agreement of the parties (Exhibits C and D, Article VII).

Inasmuch as the Union filed unfair labor practice charges over these incidents on September 30, 1971 and June 18, 1973 (Exhibits M and N, hereto), the Company concluded that the Union considers these matters to constitute existing disputes between the parties although no grievances were ever filed concerning these matters. Therefore, in conformity with the Company's understanding of the National Labor Relations Board's decision and direction to the parties in United Aircraft Corporation, 204 NLRB No. 133 (July 10, 1973), I invited the Union to meet with the Company as soon as possible in an earnest effort to resolve these outstanding disputes through the existing grievance and arbitration process or a special dispute-solving mechanism to which the parties might mutually agree (Exhibit O).

5. In all respects, the facts set forth in this affidavit and in the accompanying motion for summary judgment are true and correct to the best of my knowledge and belief.

Nathaniel B. Morse
Nathaniel B. Morse

Sworn to before me this 23rd
day of July, 1973.

day of July, 1973.



Pratt & Whitney Aircraft



EAST HARTFORD

AGREEMENT WITH LODGE 1746

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS

DECEMBER 1, 1971

of his appointment shall have been received by the company from a duly authorized officer of the union. Subject to the limitations of this Article, the company shall recognize shop steward appointments within ten (10) days (excluding Saturdays, Sundays and Holidays) after receipt of notification from the union.

ARTICLE VII Grievance Procedure

SECTION 1. In the event that a difference arises between the company, the union or any employee concerning the interpretation, application or compliance with the provisions of this agreement, an earnest effort will be made to resolve such difference in accordance with the following procedure which must be followed.

All grievances which affect the wages, hours or working conditions of any employee shall, when reduced to writing in Step 1, be signed by that employee.

Step 1. An employee having such a grievance or complaint may, after notice to his immediate supervisor, take it up either directly with his foreman or with the shop steward who shall take it up with the employee's foreman. Any such discussion shall be as brief as possible.

The provisions of this section shall not apply in the case of a grievance concerning the suspension or discharge of an employee. No steward shall be called in the case of a grievance involving any other disciplinary action until the administration of such action shall have been completed nor shall a steward be called for an employee who alleges he is being improperly laid off.

A grievance of an employee may be presented either orally or in writing at this step of the grievance procedure. If the grievance is presented orally to the foreman and is not satisfactorily settled, it must promptly be reduced to writing on the form provided. The dispositions given at Steps 1, 2 and 3 of this procedure, together with the dates thereof, must be noted on the form and signed by the respective representatives of the company and the union.

Grievance forms shall be obtainable from the foreman. When the grievance is reduced to writing, there must be set forth in the spaces provided all of the following:

- (a) A statement of the grievance and the facts involved;
- (b) The remedy requested; and
- (c) The violation, if any, of the agreement which is claimed.

When the grievance is presented in writing, the answer of the foreman will be given in writing on the form provided within five (5) working days excluding Saturdays, Sundays, and holidays after its presentation.

The shop steward shall be given an opportunity to be present at the adjustment of a grievance arising under the terms of this agreement which is presented to the foreman directly by an employee; provided, however, a shop steward shall not be paid for time so spent.

Step 2. If the grievance is not settled by the department foreman, then the shop steward within whose area the grievance arose, together with the senior steward representing that area, may take the grievance up with the shop superintendent or his representative at the next regularly scheduled meeting. The shop superintendent shall

render a decision on a grievance so presented as soon as possible but not later than five (5) working days, excluding Saturdays, Sundays, and holidays, after such meeting.

The meeting of the shop superintendent shall be held once a week if necessary.

The company will produce such pertinent existing production, payroll, attendance records, and disciplinary notices pertaining to the employee involved as may be necessary to the settlement of a grievance at this step of the grievance procedure. There shall be no obligation on the part of the company to produce any of the above records except the specific record or records which would prove or disprove a specific factual contention of the aggrieved employee.

Step 3.

(a) If the grievance is not satisfactorily settled by the shop superintendent, an appeal therefrom may be taken by the senior steward to the committee of management. The appeal by the senior steward shall be considered to be taken if the senior steward so marks the grievance form within the time limit provided in Section 5 of this Article. In addition, such appeal shall be included on an agenda letter (filed as provided in Section 9 (2) of this Article) for the first regularly scheduled meeting of the committee of management following the date of the shop superintendent's decision; provided, however, that if this is not done, the grievance shall be included on an agenda letter for the second regularly scheduled meeting of the committee of management following the date of the shop superintendent's decision. If the grievance

is not included in such an agenda letter, the decision of the shop superintendent shall be final and conclusive and binding upon all employees, the company, and the union.

- (b) A grievance which affects a substantial number of employees, other than job rating grievances, and which the foreman at Step 1 of this procedure lacks authority to settle, and grievances filed by the company or the union, may initially be presented at this step.
- (c) The committee of management shall meet with the union shop committee whenever necessary but not more frequently than every two weeks to hear grievances and complaints properly before it as set forth in Step 3 (a) and (b) of this Article.
- (d) The committee of management will render a decision on a grievance so presented to it as soon as possible but not later than five (5) working days, excluding Saturdays, Sundays, and holidays, (unless extended by mutual agreement) after its meeting with the shop committee on such grievances.

Step 4. If the grievance is not satisfactorily settled by the committee of management, the chairman of the shop committee may request in writing a conference between the Industrial Relations Director of United Aircraft Corporation or his representative and a Grand Lodge representative of the International Association of Machinists and Aerospace Workers, the business representative of Lodge 1746 and the chairman of the shop committee. Such request shall state specifically the grievance to be

discussed at such meeting. This conference shall be held as soon as possible but not later than ten (10) working days, excluding Saturdays, Sundays, and holidays, after the receipt of the written request for the conference. The decision of the Industrial Relations Director shall be rendered as soon as possible but not later than seven (7) working days, excluding Saturdays, Sundays, and holidays, after such conference.

SECTION 2. A claim that under the Hourly Job Rating Plan a job has been improperly assigned or evaluated to a labor grade shall first be taken up by the shop committee-man for the area in which the job is located with the chief personnel advisor or personnel supervisor. If such claim involves a new job or a changed job as defined herein, it must be presented to the chief personnel advisor or personnel supervisor by the committee-man within thirty (30) days of the assignment or evaluation of the new or changed job to a labor grade. The chief personnel advisor or personnel supervisor shall render his decision on such claim within thirty (30) days after the shop committee-man has notified him in writing that the union has completed its submission of facts relating to the claim.

If no satisfactory adjustment of the matter is reached by the committee-man and chief personnel advisor or personnel supervisor, any aggrieved employee may then file a grievance as hereinbefore provided. Such grievance shall be processed beginning with Step 2 of the grievance procedure provided that it is presented at that step not later than five (5) working days, excluding Saturdays, Sundays, and holidays, after the decision given by the chief personnel advisor or personnel supervisor. Such written grievance

shall state in detail the specific facts upon which the union bases its claim that the job has been improperly evaluated and shall set forth the specific factors of the evaluation which it claims are incorrect giving specific and detailed reasons for such claim.

SECTION 3.

- (a) The following grievances, if not settled at Step 4 of Section 1 of this Article, shall be submitted to arbitration upon the request of either party hereto filed in accordance with the provisions of this Article.
 - 1. A grievance concerning the discharge or disciplinary suspension of an employee.
 - 2. A grievance alleging that an employee was laid off or not recalled in violation of the provisions of Article VIII herein.
 - 3. A grievance alleging that under the Hourly Job Rating Plan a new job has not been properly evaluated or a grievance alleging that a job which has changed in grade as a result of a change in content has not been properly evaluated. For the purpose of this section, a new job is defined as one not at any time previously covered by an established job classification or job description sheet. This shall apply only after the signing of this agreement.
 - 4. A grievance by an employee alleging that his length of continuous service for the purpose of Article VIII of this agreement as shown by the company's records is erroneous.

5. A grievance by an employee alleging that the company has failed to comply with the provisions of Section 2 of Article XII of this agreement.
6. A grievance by an employee alleging that he has been demoted improperly to a job in a lower labor grade.
7. A grievance by an employee alleging that the company has failed to comply with the provisions of Section 11 of Article VIII with respect to an application he has made for a transfer to an available job on a preferred shift.
8. A grievance by an employee alleging that the company failed to comply with the provisions of Section 17 of Article VIII.
9. A grievance alleging that an employee is not properly classified in his assigned job code because he has performed the essential duties of a different job code within the bargaining unit (at least one labor grade higher than his assigned code) for a practicable majority of the time during a period of ninety (90) continuous working days. If such a grievance is found to have merit, the award of the arbitrator is limited to an adjustment in pay equal to the difference between the employee's actual earnings and the earnings he would have received had he been properly classified during the ninety (90) continuous working days immediately preceding the filing of the grievance.
10. A grievance by an employee alleging that he was

not promoted to a particular job in violation of the provisions of Section 9 of Article VIII. This, however, shall not apply in the case of promotions to leadmen's jobs.

11. A grievance by an employee alleging that the company failed to comply with the provisions of Section 1 of Article XII with respect to the payment of an overtime rate for work performed by him.
12. A grievance by an employee alleging that the company failed to comply with the provisions of Section 10 of Article XI with respect to the payment of a second or third shift premium for work performed by him.
13. A grievance by an employee alleging that the company failed to comply with the provisions of Section 1, Article XVI.
14. A grievance by an employee alleging that the company failed to comply with the provisions of Section 2, Article XVI with respect to work performed by him.
15. A grievance by an employee alleging that the company failed to comply with the provisions of Article XIX with respect to work performed by him.
16. A grievance by an employee alleging that he did not receive pay for a holiday not worked as provided in Section 1, Article XIV.
17. A grievance by an employee alleging that the

- company violated the provisions of Article XIII by not paying him the proper vacation pay allowance under the provisions of that Article.
18. A grievance by an employee alleging that the company improperly invoked the provisions of Section 4 (b), Article XXIII in terminating his employment.
19. A grievance by a female employee alleging that the company failed to credit her with the length of continuous service which she had on the date of her termination for gravida as provided by Section 4 (c), Article XXIII.
20. A grievance that the company violated Section 4, Article VI.
21. A grievance that the company violated Section 1, Step 1, Article VII.
22. A grievance that the company violated Section 1, Step 2, Article VII.
23. A grievance that the company violated Section 1, Step 3, Article VII.
24. A grievance that the company violated Section 1, Step 4, Article VII.
25. A grievance that the company violated Section 2, Article VII.
26. A grievance that the company violated Section 6, Article VII.
27. A grievance that the company violated Section 5, Article VII.

28. A grievance that the company violated Section 8, Article VII.
29. A grievance that the company violated Section 9, Article VII.
30. A grievance that the company violated Section 10, Article VII.
31. A grievance by an employee that he did not receive the job rate of his classification when qualified or did not receive such job rate not later than six (6) months or twelve (12) months, whichever is applicable from the date he started on such classification as provided by Section 9, Article XI.
32. A grievance by an employee that he did not receive pay for a holiday worked in accordance with the provisions of Section 7, Article XIV.
33. A grievance that the company violated the provisions of Section 5, Article VIII.
34. A grievance that the company transferred or promoted a shop committeeman, senior steward or shop steward in violation of the provisions of Section 16(c), Article VIII.
35. A grievance that the company failed to comply with the provisions of Section 2, Article V.
36. A grievance that the company failed to comply with the provisions of Section 1(a), Article VI.
37. A grievance that the company failed to comply with the provisions of Sections 1, 2, and 4 of Article XVIII.

38. A grievance that the company failed to comply with the provisions of Article XV.

39. A grievance that the company failed to comply with the provisions of Article XVII.

(b) Other grievances arising under this contract which are not settled at Step 4 of Section 1 of this Article may be referred to arbitration if the company and the union mutually agree in writing.

(c) Except for the specific grievances listed above in Section 3(a) of this Article or those grievances which the company and the union may during the life of this agreement agree to arbitrate under Section 3(h) of this Article, no disputes, misunderstandings, differences or grievances arising between the parties as to the meaning, interpretation or application of the provisions of this agreement shall be submitted to any arbitrator for decision. It is further understood and agreed that no grievance, dispute, misunderstanding or difference between the parties arising out of events which occurred prior to the execution of this agreement shall be submitted to arbitration under the provisions of this agreement.

(d) The decision of the arbitrator shall be supported by substantial evidence on the record as a whole and shall be final and conclusive and binding upon all employees, the company, and the union.

(e) The arbitrator shall have no power to add to or subtract from or modify in any way any of the terms of this agreement; nor shall the arbitrator have jurisdiction in any case submitted to arbitration to affect in any way, directly or indirectly, by any decision or in any other manner, the right and responsibility of the company to direct its operations; to determine the number and location of its plants; the product to be manufactured; the types of work to be performed; the assignment of all work to employees or other persons; the schedules of production; shift schedules and hours of work; the methods, processes and means of manufacturing; or the rules and regulations to be made or applied for production, discipline, efficiency, and safety.

(f) The party referring a grievance to arbitration shall within fifteen (15) working days, after selection of the arbitrator pursuant to Section 3(h) of this Article, notify the arbitrator of his selection and request the earliest available dates for hearing.

(g) The party referring a grievance to arbitration shall have the obligation of going forward with its case before the other party shall be required to present its case or adduce any testimony.

(h) It is agreed that during the term of this agreement the arbitrator to whom the grievances listed above shall be referred for a decision shall be one of the following — Mr. I. Robert Feinberg, Mr. Abram H. Stockman, or Mr. Charles O. Gregory. The designation of the arbitrator shall be made either by mutual agreement of the parties hereto; or in the absence of such agreement, the arbitrator shall be alternated with each case.

(i) The fee and expenses of the arbitrator shall be divided equally between the company and the union.

(j) Should the company and the union fail to reach agreement on the naming of an arbitrator to fill a vacancy the parties shall jointly request the Federal Mediation and Conciliation Service to submit a panel of seven (7) arbitrators. When notification of the names of the panel is received, the parties, in turn, shall have the right to strike a name from the panel until only one name remains. The remaining person shall be the arbitrator. The right to strike the first name from the panel shall be determined by lot.

SECTION 4. In agreeing to subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of Section 3 of this Article, it is the specific intent of the parties that the management prerogatives reserved to the company in Article I of this agreement shall not, in any case submitted to arbitration, be lessened, diminished, or affected by any decision of the arbitrator, and that the arbitrator's jurisdiction shall be limited to the specific grievances listed in subsection (a) of Section 3. Further, the union acknowledges that included among (but not limited to) the limitations on the jurisdiction of the arbitrator as set forth in subsections (c) and (e) are:

1. The right to determine the size and number of working force in the active employ of the company from time to time;
2. The right to determine whether the company's work shall be performed by employees of the company or independent contractors or their employees;

3. The right to determine the identity of the company's personnel to whom work shall be assigned;

4. The right to determine whether transfers, promotions or demotions are to be made; and

5. The identity of or number of new employees to be hired.

It is understood, however, that the company's exercise of its prerogatives so excluded from the scope of the arbitrator's jurisdiction is not intended to limit the arbitrator's power or jurisdiction with respect to effectuating specific rights of employees set forth in the contract.

SECTION 5. Should any appeal from the disposition of a grievance given at Steps 1, 2, 3, or 4 of Section 1 not be taken within five (5) working days, excluding Saturdays, Sundays, and holidays, from the date of such decision, then the decision on such grievance shall be final and conclusive and shall not be reopened for discussion. Any disposition of a grievance accepted by the union or by the company in the case of a grievance filed by the company, or from which no appeal has been taken, shall be final and conclusive and binding upon all employees, the company, and the union.

SECTION 6. Any grievance not presented for disposition through the grievance procedure described herein within five (5) working days, excluding Saturdays, Sundays, and holidays, from the date it was found to exist by the employee, shall not thereafter be considered a grievance under this agreement unless a reason satisfactory to the company in explanation of the failure to present the grievance within such time is given.

SECTION 7. In no event shall any disposition or award upon any grievance be made retroactive for any period prior to the date the grievance was first filed in writing.

SECTION 8. It is agreed that each shop steward has assigned work to perform in the plant and the interests of production and efficiency require that interruptions of the shop stewards' work assignments be as infrequent and of as short duration as the grievance or complaint reasonably requires. Shop stewards shall first request permission from their supervisor before leaving their jobs. Such request shall not unreasonably be denied.

Upon entering a department other than his own, such shop steward shall first report to the foreman or the supervisor in charge of the new department and make known the purpose of his being there.

SECTION 9. A member of the shop committee, senior steward, or a shop steward shall, after notice to his foreman, be allowed to leave his job for attendance at the following meetings, when necessary and as indicated. Time spent in attendance at such meetings during his scheduled working hours shall be recorded on a card by time clock and paid as provided in subsections 4, 5 or 6 below.

1. For a senior steward or a shop steward to attend a regular meeting with the shop superintendent or his representative to be held once a week if necessary for not exceeding three (3) hours.
2. For a member of the shop committee to attend a regular meeting of the committee of management to be held whenever necessary, but not more frequently than once every two (2) weeks, and for not exceeding three (3) hours.

ing three (3) hours. Before the holding of such meeting, the chairman of the shop committee must have presented to the personnel manager an agenda in writing at least forty-eight (48) hours previous to the time of the meeting. Such agenda shall state fully the specific grievances or complaints which the union wishes to discuss at such meeting. There shall be no obligation on the part of management representatives to discuss any matter which does not appear on such agenda.

3. For a member of the shop committee to attend any special meeting not exceeding three (3) hours relating to discharge or other matters which cannot reasonably be delayed until the next regular meeting of the shop committee and the committee of management.
4. Shop stewards will receive pay for grievance or complaint handling as described in Article VII, Section 1, Step 1 and Step 2 herein at their regular base rate exclusive of overtime allowances, but including shift premium, if any, not exceeding two (2) hours in any work week.
5. Senior stewards will receive pay for time spent at regular meetings with the shop superintendent or his representative as described in Article VII, Section 1, Step 2 herein at their regular base rate exclusive of overtime allowances, but including shift premium, if any, not exceeding three (3) hours in any work week.
6. Shop committeemen will receive pay for time spent at regular meetings as described in Article VII, Section 1, Step 3 herein at their regular base rate exclusive of overtime allowances, but including shift premium, if any, not exceeding three (3) hours in any work week.

tion 1, Step 3 herein at their regular base rate exclusive of overtime allowances, but including shift premium, if any, not exceeding three (3) hours in any work week. Shop committeemen will also receive pay for time spent at any special meetings as described in Article VII, Section 9, subsection 3 above at their regular base rate exclusive of overtime allowances, but including shift premium, if any, not exceeding three (3) hours in any work week.

SECTION 10. Any employee shall have the right to appeal his discharge or suspension through the grievance procedure within five (5) working days from the date thereof. Failure to file such an appeal within five (5) working days shall prohibit any further consideration of such discharge or suspension. If as a result of such appeal the employee is found to have been discharged or suspended without just cause, he shall receive pay at his regular rate for the time he would have otherwise normally worked less any income he may have received from any other source. An employee who has been discharged or given a disciplinary suspension, shall before leaving the plant be permitted to see the shop steward for the area in which he worked at a location designated by the company if he requests this privilege of his foreman.

ARTICLE VIII

Seniority

SECTION 1.

- (a) In case of an indefinite layoff for lack of work, employees shall be laid off and recalled by noninter-

J.A. 25

Pratt & Whitney Aircraft

DIVISION OF U.S.



October 30, 1972

Mr. Gordon Sawyer
Chairman of Shop Committee
Industrial Aircraft Lodge No. 1746
357 Main Street
East Hartford, Connecticut 06118

Dear Mr. Sawyer:

It appears from a charge which the union has filed with the National Labor Relations Board on or about October 16, 1972 in Case No. 1-CA-8626 that the following disputes exist between the company and the union concerning the interpretation and application of our current collective bargaining agreement:

- (1) An alleged refusal on June 7, 1972 by East Hartford Foreman Otto Heller to summon a steward pursuant to the request of employee James Rizner;
- (2) An alleged attempt on June 15 and 16, 1972 by East Hartford Foreman Edward Pitney to bypass the union and individually discuss and settle the grievance of employee Ken Roberge;
- (3) An alleged refusal of Foreman J. Fogg on or about August 13, 1972 during the first step of a grievance filed by employee Bruce Ladd to furnish Steward Leopold Polliardi certain information; and an alleged refusal of the company at the second step of the grievance procedure on or about August 29, 1972 to furnish the same information; and

J.A. 26

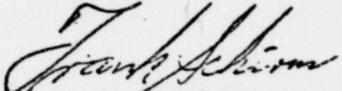
Pratt & Whitney Aircraft

(4) An alleged refusal by Foreman Edward Pitney on or about June 15 and 16, 1972 during the first step of a grievance filed by employee Ken Roberge to furnish information requested by Steward Paul Kelly; and an alleged refusal by the company on or about July 3, 1972 to furnish the same information requested at the second step of the grievance procedure.

In accordance with Article VII, Section 1, Step 3 (a) and (b), the company wishes to include these disputes or grievances on the agenda of the next regularly scheduled third step grievance meeting to be held on November 9, 1972 at 2:00 p.m.

Very truly yours,

PRATT & WHITNEY AIRCRAFT
CONNECTICUT OPERATIONS


F. F. Schirm
Personnel Manager

HAND DELIVERED

United
Aircraft

December 13, 1972

Mr. Gordon Sawyer
Chairman, Shop Committee
Industrial Aircraft Lodge No. 1746
I.A.M.A.W.
357 Main Street
East Hartford, Connecticut 06118

Dear Mr. Sawyer:

In view of the inability of the parties to reach an agreement on December 7, 1972 at the third step of the grievance procedure concerning the grievances filed by the company on October 30, 1972 relative to:

- "(1) An alleged refusal on June 7, 1972 by East Hartford Foreman Otto Heller to summon a steward pursuant to the request of Employee James Rizner;
- "(2) An alleged attempt on June 15 and 16, 1972 by East Hartford Foreman Edward Pitney to bypass the union and individually discuss and settle the grievance of employee Ken Roberge;
- "(3) An alleged refusal of Foreman J. Fogg on or about August 13, 1972 during the first step of a grievance filed by employee Bruce Ladd to furnish Steward Leopold Pcliardi certain information; and an alleged refusal of the company at the second step of the grievance procedure on or about August 29, 1972 to furnish the same information; and

Exhibit G

EAST HARTFORD, CONNECTICUT 06108

J.A. 28

UNITED AIRCRAFT CORPORATION

Mr. Gordon Sawyer

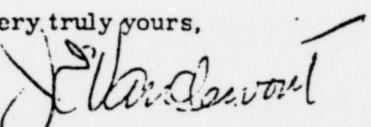
December 13, 1972

"(4) An alleged refusal by Foreman Edward Pitney on or about June 15 and 16, 1972 during the first step of a grievance filed by employee Ken Roberge to furnish information requested by Steward Paul Kelly; and an alleged refusal by the company on or about July 3, 1972 to furnish the same information requested at the second step of the grievance procedure."

the company hereby appeals these matters to the fourth step of the grievance procedure.

A meeting to discuss these grievances is being scheduled in my office for Thursday, December 21, 1972 at 10:00 a.m. Please confirm this date and time if it is convenient. If it is not convenient, other arrangements can be made.

Very truly yours,


J. E. Vandervoort
Industrial Relations Administrator

JEV:la

Registered-Return Receipt No. 143267

United
Aircraft

January 15, 1973

Mr. Gordon Sawyer
Chairman, Shop Committee
Industrial Aircraft Lodge No. 1746
I. A. M. A. W.
357 Main Street
East Hartford, Connecticut 06118

Dear Mr. Sawyer:

Inasmuch as the company and the union failed to reach agreement at the fourth step meeting held on January 9, 1973 in connection with the grievance filed by the company on October 30, 1972 relative to:

- "(1) An alleged refusal on June 7, 1972 by East Hartford Foreman Otto Heller to summon a steward pursuant to the request of Employee James Rizner;
- "(2) An alleged attempt on June 15 and 16, 1972 by East Hartford Foreman Edward Pitney to bypass the union and individually discuss and settle the grievance of employee Ken Roberge;
- "(3) An alleged refusal of Foreman J. Fogg on or about August 13, 1972 during the first step of a grievance filed by employee Bruce Ladd to furnish Steward Leopold Polliardi certain information; and an alleged refusal of the company at the second step of the grievance procedure on or about August 29, 1972 to furnish the same information; and
- "(4) An alleged refusal by Foreman Edward Pitney on or about June 15 and 16, 1972 during the first step of a grievance filed by employee Ken Roberge to furnish information requested by Steward Paul Kelly; and an alleged refusal by the company on or about July 3, 1972 to furnish the same information requested at the second step of the grievance procedure."

Exhibit H

EAST HARTFORD, CONNECTICUT 06108

J.A. 30

UNITED AIRCRAFT CORPORATION

Mr. Gordon Sawyer:

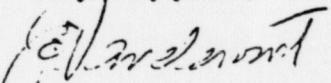
January 15, 1973

the company hereby appeals the grievance to arbitration under Article VII, Section 3(a), of the agreement between the parties dated December 1, 1971.

The company proposes that this dispute be referred to Mr. I. Robert Feinberg for hearing and decision since he is the next arbitrator in the regular rotation.

I would appreciate a prompt reply so that I may contact Mr. Feinberg to arrange a hearing date.

Very truly yours,



J. E. Vandervoort
Group Director
Industrial Relations

JEV:la

Registered - Return Receipt #143281

J.A. 31



INDUSTRIAL AIRCRAFT LODGE No. 1746

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

- MACHINISTS BUILDING -

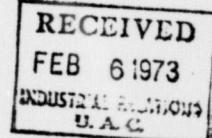
357 MAIN STREET - EAST HARTFORD, CONNECTICUT 06118

TELEPHONE: 568-9430

February 2, 1973

CERTIFIED MAIL
RETURN RECEIPT REQUESTED No. 557555

Mr. James E. Vandervoort
Group Industrial Relations Director
United Aircraft Corporation
Pratt & Whitney Division
400 Main Street
East Hartford, Connecticut 06108



Dear Mr. Vandervoort:

Your letter of January 26, 1973 states "the issues involved are ... all issues concerned with the first or second step of the grievance procedure" and "are arbitrable under Article VII, Section 3(a) (21) and 3(a) (22)."

With respect to items one, three and four of your letter of January 15, 1973, we agree and, accordingly, the union is prepared to arbitrate these grievances before Mr. I. Robert Fineberg.

With respect to item two, however, the union does not agree that a grievance involving an attempt to "bypass the union and individually discuss and settle the grievance" is a grievance covered by Article VII, Section 1, Step 1.

As we stated in our January 24, 1973 letter, the Company and union are obligated to arbitrate only the thirty-nine (39) types of grievances listed in Article VII, Section 3(a) (1 - 39). Any other grievance may be referred to arbitration "only if the Company and the Union mutually agree in writing." *Id.* at Article VII, Section 3(b). The union does not agree to arbitrate this grievance, and, accordingly, denies your request to refer this grievance to arbitration.

With respect to those grievances which are subject to arbitration under Article VII, Section 3 we again advise you that the union will seek dismissal for untimeliness in filing.

Very truly yours,

Industrial Aircraft Lodge No. 1746

Gordon Sawyer

Gordon Sawyer
President

GS/sd

Exhibit I

J.A. 32

LAW OFFICES
RATNER AND DRIESEN, P.C.
818 EIGHTEENTH STREET, N.W.
WASHINGTON, D.C. 20006

MOZART G. RATNER
GEORGE B. DRIESEN
STEPHEN D. GORDON
BERNARD RIES

April 2, 1973

AREA CODE 202
288-8306

RECEIVED
APR 3 1973

JOSEPH C. WELLS

In re: United Aircraft Corporation v. Industrial
Aircraft Lodge No. 1746, International Association
of Machinists and Aerospace Workers, AFL-CIO
Civil Action No. 15,685

Dear Mr. Wells:

This will confirm our telephone conversation on Friday, March 30, 1973, in which I advised you that Industrial Aircraft Lodge 1746, IAM, has agreed to arbitrate the grievance filed by the Company on October 30, 1972 and referred to in subparagraph ("2") in the letter from Mr. James Vandervoort to Mr. Gordon Sawyer dated January 15, 1973. In light of this agreement, we understand that you will terminate the litigation in the above-captioned proceeding in Federal District Court.

Very truly yours,

George B. Driesen
George B. Driesen

GBD:jnh

CC: Mr. Gordon Sawyer
Mr. Gilbert Earl, Clerk, District Court for the District of Conn.
The Honorable T. Emmet Clarke

Exhibit J

Office of Vice President

United Aircraft

July 13, 1973

Mr. Justin Ostro
Grand Lodge Representative
International Association of Machinists and
Aerospace Workers
Machinists Building
357 Main Street
East Hartford, Connecticut 06118

Dear Mr. Ostro:

I am writing to suggest that, as a consequence of the Decision of the National Labor Relations Board in Cases 1-CA-7234, 1-CA-6957 and 1-CA-7518, the union and the company meet as soon as possible in an earnest effort to resolve the several disputes involved in these cases.

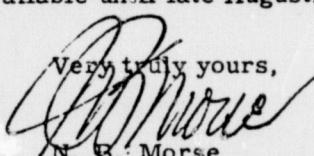
Further, I believe that implicit in the Board's Decision is its direction that other pending disputes between us, such as those involved in Case 1-CA-8626 and Case 1-CA-7890 be handled in a similar manner.

As you know, some of the matters involved are quite old, others involve circumstances wherein no grievance has been filed, and still others are of such a character that their submission to the formal grievance procedure at this time may be impractical. It is my suggestion, therefore, that we meet with you -- and whomever you wish to accompany you -- to work out procedures for disposing of these disputes in the most expeditious manner possible, including the possibility of convening a special fourth step meeting by agreement of the parties without the need to process the matters through the lower steps of the grievance procedure. It would be my hope that through such discussions we could work out a procedure which would result in an early and amicable resolution of these disputes. Also, where such resolution is not accomplished -- in spite of good faith efforts by both parties -- to discuss the manner in which appropriate disputes may be promptly submitted to arbitration.

I plan to be absent from the office during the first three weeks of August. Thus, if this proposal is acceptable to the unions, I suggest we arrange the initial meeting before the two week plant shutdowns which begin July 29, 1973, since presumably most union leadership will also be unavailable until late August.

Your early reply would be appreciated.

Very truly yours,


N. B. Morse
Vice President for
Industrial Relations

NBM:gma
Registered Mail No. 143329

Exhibit O

EAST HARTFORD, CONNECTICUT 06108

East Hartford, Connecticut

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION;
HAMILTON STANDARD DIVISION)

and

RECEIVED

AUG 7 1973

LODGES 700 and 743, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION)

and

Case 1-CA-7890

Case 1-CA-8626

LODGE 1746, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO

ORDER TRANSFERRING PROCEEDING TO THE BOARD

and

NOTICE TO SHOW CAUSE

On May 31, 1973, the Regional Director for Region 1 of the National Labor Relations Board issued a Complaint and Notice of Hearing and, on July 11, 1973, the Acting Regional Director issued an Order Consolidating Cases, Amended Complaint and Further Notice of Hearing in the above-entitled proceeding alleging that the Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Subsequently, the Respondent filed answers to the complaint and the amended complaint, admitting in part and denying in part, the allegations of the complaint, and submitting an affirmative defense.

Thereafter, on July 25, 1973, the Respondent filed a Motion for Summary Judgment with a Memorandum of Law in Support of Motion for Summary Judgment with an Affidavit and exhibits attached. The Respondent moves the Board for an order dismissing the complaint herein, retaining jurisdiction for the sole purpose of entertaining an appropriate and timely motion for further consideration on a proper showing that the disputes have not been resolved with reasonable promptness through grievance and arbitration procedures or that such procedures have not been fair and regular. The Respondent requests the Board to grant the motion for summary judgment and dismiss the complaint in conformity with its decision in United Aircraft Corporation, 204 NLRB No. 133.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the above-entitled proceeding be, and it hereby is, transferred to and continued before the Board in Washington, D. C., and that the hearing scheduled herein for October 30, 1973, be, and it hereby is, postponed indefinitely.

NOTICE IS HEREBY GIVEN that the parties show cause, in writing, filed with the Board in Washington, D. C., on or before August 15, 1973, (with affidavit of service of copies on the parties to this proceeding), why the Respondent's Motion for Summary Judgment should not be granted.

Dated, Washington, D. C., August 3, 1973.

By direction of the Board:

George A. Leet

Associate Executive Secretary

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of

RECEIVED

AUG 20 1973

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION;
HAMILTON STANDARD DIVISION)

and

CASE NO. 1-CA-7890

LODGES 700 AND 743, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION)

and

CASE NO. 1-CA-8626

LODGE 1746, INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

GENERAL COUNSEL'S RESPONSE TO ORDER TO
SHOW CAUSE WHY RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT SHOULD BE GRANTED

Comes now Counsel for the General Counsel and in response to an Order
to Show Cause entered by direction of the Board, in the subject case, on
August 3, 1973 submits the following:

1. On July 11, 1973, the Acting Regional Director issued an Order
Consolidating Cases, Amended Complaint and Further Notice of Hearing in the
subject cases alleging violations of Sections 8(a)(1), (3) and (5) of the
Act by Respondent. Respondent subsequently filed an Answer joining certain
issues and presenting an affirmative defense, alleging that certain
allegations of the Amended Complaint have been submitted to arbitration and
that others are subject to "voluntary contractual provisions of the parties'
collective bargaining agreements."

Respondent now moves the Board for Summary Judgment dismissing the
Complaint but retaining jurisdiction, citing United Aircraft Corporation,
204 NLRB No. 133. This response is directed to that Motion pursuant to
Board's Order to Show Cause why Respondent's Motion should not be granted.

2. Counsel for the General Counsel takes no position with regard to the relief requested by Respondent, but leaves this to the Board's sound discretion. However, in order that the Board may be fully informed in this matter and assist it in making a final disposition; it is deemed necessary and appropriate to set forth the facts and some theories underlying the Amended Complaint.

3. In order to properly evaluate Respondent's Motion, some background facts are appropriate.

The long relationship between the Respondent and the Union (International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodges 1746, 700 and 743) has been marked by recurring labor disputes among various ^{1/} subsidiaries of the United Aircraft and the certified lodges.

Since the 1960 strike, the Union has sought to strengthen its support among the employees, through the use of highly visible shop and union stewards who not only represent the employees in their grievances but also ^{2/} solicit employee membership in the Union (see generally United Aircraft Corporation, 179 NLRB 935, 940). This steward system has become a primary focus of Respondent's counter campaign. Thus, in previous cases involving the Respondent and the Union (179 NLRB 935 and 180 NLRB 278), the Board found, inter alia, that between the fall of 1966 and spring of 1967, the Respondent at the four Connecticut plants of its Pratt & Whitney Division, had unlawfully interrogated, threatened, harassed, suspended and/or discharged five shop stewards and nine union stewards in violation of Section 8(a)(1)

^{1/} United Aircraft Corporation, 139 NLRB 39, enfd. 324 F. 2d 128 (C.A. 2); United Aircraft Corporation, 144 NLRB 492, enfd. 333 F. 2d 819 (C.A. 2); United Aircraft Corporation, 181 NLRB 892, enfd. 434 F. 2d 1198 (C.A. 2); United Aircraft Corporation, 179 NLRB 935, enfd. 440 F. 2d 85 (C.A. 2); United Aircraft Corporation, 180 NLRB 278, enfd. 440 F. 2d 85 (C.A. 2); United Aircraft Corporation, 183 NLRB No. 96; and United Aircraft Corporation, 192 NLRB No. 62, and United Aircraft Corporation, 204 NLRB No. 131.

^{2/} Union stewards unlike shop stewards, are not authorized to process grievances, but they wear distinctive shirts and union badges, represent the interests of the employees, and solicit support for the Union.

and (3) of the Act. ^{3/} The Court of Appeals for the Second Circuit enforced those Orders in full. (United Aircraft Corporation v. N.L.R.B., 440 F. 2d ^{4/} 85 (1971).

It is in this context of a continuing campaign of harassment that the ^{5/} Amended Complaint was issued.

4. General Counsel offers de bene, the following to show what facts are available to support the Amended Complaint and which would, at trial, be offered in support thereof.

(a) Amended Complaint, Section 8

(1) Allegations

"8. Commencing on or about June 7, 1972 and at all times thereafter, Respondent United Aircraft did refuse, and continues to refuse, to bargain collectively with, and accord full statutory recognition to, Lodge 1746, as the exclusive collective bargaining representative of the employees in the unit described above in Paragraph 6 in that:

"a. On or about June 7, 1972, Respondent by Foreman Otto Heller, Department 27, at its East Hartford plant, after several requests refused to provide employee James Rizner with the services and persence of a Shop Steward in connection with his grievance.

"b. On or about June 15, 16, July 3 and 20, 1972, and at all times thereafter, Respondent has refused to furnish to Lodge 1746 the standards used by foremen for ~~work~~ ratings, as well as other information, records, reports and notebooks made and maintained by Respondent which were relevant and necessary to the intelligent analysis and presentation of grievances by Lodge 1746 and to the proper functioning and normal operations of the existing contract grievance procedure, thereby preventing, frustrating and limiting Lodge 1746's ability and capacity to effectively utilize said contract grievance procedure."

3/ In one of the incidents found to be unlawful, which is particularly relevant to the instant case, union steward, Nicholas D'Andrea, upon the filing of a grievance with his foreman, was subjected to verbal threats and abuse by Company officials and, on one occasion was even followed to the toilet by a company investigator, and was ultimately discharged. (See also 204 NLRB No. 131.)

4/ In Board Case No. 1-CA-7234, several additional incidents involving the intimidation of union and shop stewards between February and July, 1970, were found to be violative of the Act by Administrative Law Judge Pollack (TXD 240-72) but were the subject of deferral by the Board (204 NLRB No. 133)

5/ Footnote 5 appears on next page.

(2) Facts

The allegations involved herein arise from the Union's attempt to process grievances involving three unit employees - Bruce Ladd, Kenneth ^{6/} Roberge, and James Rizner. The Ladd grievance was filed on August 16, 1972; and alleged that Ladd, an electronic instrument mechanic, had been incorrectly rated as to his accuracy. That grievance proceeded to the third step where it was withdrawn by the Union as moot because Ladd had been promoted to another job.

Employee Rizner filed a grievance on his merit rating in May, 1972. At the second step meeting, held on May 26, 1972, the Union withdrew the grievance based on representation by Plant Manager John H. Phelps that Rizner had engaged in heated argument with another employee, a consideration that apparently led to a lowering of his cooperation rating. Rizner's efforts to file a new grievance based on his denial of the altercation were rebuffed by Foreman Heller, who described the matter as a dead issue and declined to call a Union steward as requested by Rizner.

On June 16, 1972, employee Roberge filed a grievance contending that his merit rating did not accurately reflect his job performance. With regards to the grievance filed by Roberge, it appears that during the course of the first step meeting between Steward Paul Kelly and Foreman Edward Pitney on June 15 and 16, 1972, Kelly requested information, including the relevant entries in a notebook kept by Pitney, to substantiate the merit rating given Roberge. This request was denied. The Union renewed its request for Pitney's notebook, in addition to other records, at the second step grievance meeting

5/ On July 6, 1973, the Acting Regional Director also issued a Complaint in Case No. 1-CA-8370, involving Respondent's Boron Filament plant. The allegation of that Complaint shows a continuation of activity found by the Board to be violative of the Act (United Aircraft Corporation, Boron Filament, 199 NLRB No. 68), which is now before the Second Circuit Court of Appeals for enforcement upon Respondent's refusal to comply with the Board's order.

6/ General Counsel does not dispute the statements made by Respondent's Nathaniel B. Morse regarding the status of these grievances as set forth in his affidavit attached to Respondent's Motion for Summary Judgment (see Exhibits H, I and J attached thereto).

held on July 3, 1972. However, Plant Manager Phelps stated that he knew nothing of the notebook, although such a notebook was in fact kept by Pitney. Additionally, Phelps failed to produce any of the other information requested by the Union.

Following the withdrawal of Rizner's grievance by the Union, Steward R. Garry criticized Rizner for not disclosing his altercation to the Union. Rizner denied that the incident occurred and was told that he should file another grievance to clear the record of the altercation from his file. On June 7, 1972, Rizner requested Foreman Otto Heller to call a steward to discuss the matter. Heller was instructed by one of Respondent's personnel officer that a steward should be obtained only if a new grievance was involved, but that if the matter related to the grievance had been withdrawn, it was a "dead issue." Following further discussion with Rizner, Heller informed him that the matter was a dead issue and that "he should take it up with the Union because it was now their problem." The parties' current contract contains ^{7/} no provisions enabling a foreman to deny an employees' request for a steward.

With regard to the Roberge grievance, it should be noted that the Union also specifically requested to examine Foreman Pitney's notebook and other information relating directly to Roberge's merit rating at the second step of the grievance procedure in accordance with the information provisions of ^{8/} the parties' collective bargaining agreement. By denying this request for

^{7/} Under the parties' previous contract, it was apparently the practice that foremen would determine initially whether a grievance was covered by the contract, and would decline to call a steward if he determined that the contract did not cover the matter. The employee then would file his grievance by going to the Union on his own time. This practice is not continued under the existing contract. See 1971 Agreement, Article VII, Section 1, Step 1. (Affidavit of N. B. Morse, Respondent's Motion on Summary Judgment, Exhibit D.)

^{8/} Article VII, Section 1, at p. 16 of the 1971 Agreement provides in relevant part:

The Company will produce such pertinent existing production, payroll, attendance records, and disciplinary notes pertaining to the employee involved as may be necessary to the settlement of a grievance at this step of the grievance procedure. There shall be no obligation on the part of the Company to produce any of the above records except for the specific record or records which would prove or disprove a specific actual contention of the aggrieved employee. (Morse's affidavit, Exhibit D.)

relevant and necessary information, the Respondent violated Section 8(a)(5)
^{9/}
and (1) of the Act. N.L.R.B. v. Acme Industrial Co., 385 U.S. 432.

Foreman Heller's conduct, in declining to call a steward as requested by Rizner, is also viewed as violating Section 8(a)(5) and (1) on the ground that it frustrated Rizner's resort to step one of the parties' grievance procedure. United Aircraft Corp., 179 NLRB 935, 966. Heller admittedly acted on the basis of instructions received from the Employer's personnel office. Such instructions, together with the Respondent's demonstrated ^{10/} proclivity to engage in such conduct, makes it clear that the Rizner incident, despite its apparent isolated nature, does not constitute a mere contract breach but rather an unfair labor practice.

(b) Amended Complaint, Section 9

(1) Allegations

"9. Since on or about July 1, 1971 and continuing to date, Respondent has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of their rights as guaranteed in Section 7 of the Act, by the following acts and conduct:

Under the pretext of enforcing plant rules concerning employee conduct on company time and property, Respondent United Aircraft has followed and applied and is continuing to follow and apply at its various plants a continuing, deliberate and historical pattern of unlawful discrimination and harassment of Charging Parties' stewards, committeemen, officers, agents and representatives, in order to discourage, inhibit, disrupt and limit said representatives and officers and agents from freely and effectively engaging in protected activity and otherwise degrade and disparage said agents, representatives and officials and the Charging Unions themselves in the eyes of the employees of Respondent United Aircraft, to wit:

"a. Since on or about July 1, 1971 and continuing thereafter, Respondent, by General Foreman Robert Downing and Foreman Richard Owens, in or about Department 183, Hamilton Standard Division, Windsor Locks Plant, harassed union and shop stewards of Lodge 743 by subjecting them to excessively close surveillance and supervision and unreasonably and discriminatorily applied against them because of their union status and activity plant work rules relative to employee communications and conduct on company time and property.

^{9/} See also, United Aircraft Corp., supra, 179 NLRB at 965-68.

^{10/} Id. at 968. See also United Aircraft Corporation, 204 NLRB No. 133, findings of ALJ Pollack at page 3, note 2.

"b. Since on or about July 1, 1971, Respondent, by Foreman Richard Owens, in or about Department 183, Hamilton Standard Division, Windsor Locks Plant, harassed Union and shop stewards of Lodge 743 because of their union status and activity by subjecting them to onerous jobs and undesirable working conditions.

"c. On or about April 14, 1971, Respondent Pratt & Whitney, by its General Foreman Peter Laskarin and Foreman Peter Valenti, at its Middletown Plant, lied to employees concerning the efforts and activities of Lodge 700 regarding the retirement of an employee for the purpose of undermining and degrading employees' support of Lodge 700."

(2) Facts

(a) Sections 9 a and b

During the third week of June, 1971, Albert Weingarten was appointed union steward to represent various departments at the Respondent's Hamilton Standard plant. Since his hire in 1965, with one exception, Weingarten had ^{11/} encountered no difficulties with his supervisors. Indeed, in response to Weingarten's complaints concerning overtime assignments, General Foreman Downing, summoned him to his office only a few days prior to his appointment as union steward, and expressed a desire to "work with" the men in connection with their grievances. Downing said that he would handle whatever problems Weingarten would bring to his attention and possibly that he would attempt to obtain a position of leadership (in management) for Weingarten at some future date. Two days after this conversation, Weingarten decided to become a union steward.

Upon his appointment as union steward, Weingarten began to wear a union shirt and steward badge. One week later, Weingarten voiced a grievance to Downing concerning the alleged operation of lift trucks by non-department employees who were neither licensed nor authorized to operate them. He ^{12/} complained that this constituted a safety hazard. Downing responded

11/ One year before his appointment as union steward, Weingarten had some unexplained "trouble" with his immediate foreman, Richard Owens, which resulted in Weingarten's demotion. Since that time, Weingarten received his work assignments from his general foreman, Robert Downing.

12/ Pursuant to Article VVI, Section 1, of the 1971 collective bargaining agreement which was then in effect between the parties, Step One of the grievance procedure provides for informal adjustment between the grievant and a foreman.

that this matter was none of Weingarten's business that the latter was a troublemaker for bringing it to his attention, and that he would continue to assign these men to forklifts notwithstanding the union's objections. At the end of that work day, Weingarten reported his conversation with Downing to Union Business Representative George Purcell, who advised Weingarten to call a shop steward and file a grievance, should this practice continue.

Since the practice was not stopped, Weingarten confronted Downing on July 7, 1971 advised the latter that he had a grievance and requested that ^{13/} a shop steward be called. After first declaring that he did not need "a goddamn steward", Downing stated that he would think the matter over. Shortly thereafter, Downing discussed the matter with shop steward Walter ^{14/} Delaney.

A short time after the Downing-Delaney meeting, Downing approached Weingarten at the latter's work site and engaged in a 10-15 minute diatribe against Weingarten, and the Union's representatives in the plant asserting that Weingarten had no right to wear a union shirt and union badge. Downing shouted at Weingarten that the latter was in a department where he was not wanted, that he was "disrupting" work and "badgering" Downing and that the latter would "walk [Weingarten] out of the department" whenever he decided to. Downing added that "he didn't care what the goddamned Union did"; that he "would do whatever he wanted to do in the department" and that "the goddamned Union couldn't do anything about it." Downing added: "All you Union people are a bunch of no-good sons-of bitching bastards and a bunch of trouble makers." Downing further suggested that "he knew about the Union" that "they had all been a bunch of gangsters" that "they had carried guns" and

13/ Article VII, Section 1, Step 1 of the above-mentioned contract provides in relevant part that "The shop steward shall be given an opportunity to be present at the adjustment of a grievance arising under the terms of this agreement which is presented to the foreman directly by an employee."

14/ Although no formal written grievance was filed over this matter, it was later discussed at a joint shop safety meeting.

that "where he come from they took care of people like this." Finally, Downing asserted that Weingarten and Delaney had planned this entire ^{15/} incident, as part of a conspiracy against him. Although this incident was later reported to Delaney, with Downing suggesting that Weingarten may wish to file a grievance against him (Downing) for harassment, no grievance, in fact, was ever filed over this matter.

Thereafter, the Respondent, through Downing, ordered Weingarten not to follow the accepted practice of allowing departmental employees to stop working 5 to 10 minutes early for clean-up purposes and Downing would "practically every day" approach Weingarten's work area to ask him whether he "was quitting early."

It will also be shown that upon his appointment as union steward in ^{16/} July until his layoff at the end of October, ^{16/} Weingarten was kept under surveillance by Foreman Owens. Specifically, each and every time Weingarten ^{17/} visited the Men's Room, for example, Owens showed up.

(b) Section 9 c

With regard to the allegation made in Section 9 c of the Amended Complaint illustrates a novel and insidious undermining of the employees' confidence in their bargaining representative. The allegation here injects a new dimension to Respondent's long list of proven violation of the Act and Respondent's actions directed to employees suggest that Union officials were acting directly contrary to employee interests.

15/ This exchange is corroborated by several witnesses.

16/ No Charge alleging discriminatory motivation with regard to Weingarten's lay off was filed.

17/ The harassment and disparate treatment toward Weingarten bears a striking similarity to Respondent's actions directed toward another Union Steward, Tobin, found by the Board to be violative of the Act (United Aircraft, 188 NLRB No. 96) wherein it was also held ". . . the record shows that a pattern of discrimination against Union stewards has been perpetrated by Respondent in prior cases." (188 NLRB No. 96, at p. 3; citing also 179 NLRB 935 and 180 NLRB 278).

18/ Footnote 18 appears on next page.

The contract between the Company and the Union provides that "Employees after attaining age sixty-five (65) may, at the discretion of the Company, be retired, or, where they are ineligible for retirement, be terminated from their employment with the Company." (1971 Agreement, Article XXIII, Section 2.) Pursuant to this provision, it has been the Respondent's consistent practice to unilaterally extend the employment of retirees for one year periods when such extensions were deemed to be in the Company's best interests. The Union, General Counsel will show, has never been consulted with, nor has it ever participated in the management decision either to retire or to extend an employee's tenure.

Thus, Union member John Smallridge, an employee at the Middletown plant, reached the age of 65 in June, 1968, and became eligible for retirement. At the request of the Company, Smallridge accepted three one-year extensions, the last of which was due to expire on June 30, 1971. The Union played no part in any of these extension arrangements.

In April, 1971, approximately 10 weeks prior to the expiration of his extension, Smallridge was summoned to the office of his supervisors, General Foreman Peter Laskavin and Foreman Peter Valenti. The Respondent's representatives informed Smallridge that many men were being laid off and that Smallridge would therefore have to accept retirement ten weeks earlier than planned. Laskavin said that he had done everything he could to retain him but that it was the Union that was forcing his early termination, not the Respondent. Laskavin related that Plant Service Supervisor, John LeBlanc, had spent the entire afternoon attempting to persuade the Union to permit Smallridge to remain until June 30, but to no avail. Accordingly, Smallridge was advised that he would be retired on April 18, 1971.

18/ While it may be argued that the allegations contained in Sections 8 a and b and 9 a and b of the Amended Complaint are similar to the issues framed by the Charge and Amended Complaint in 204 NLRB No. 133, the allegation contained in Section 9 c of the instant Amended Complaint is novel in that it was not part of the issues presented to ALJ Pollack (see TXD 240-72), nor in any other prior cases.

Immediately thereafter, Smallridge confronted Union Representative Bill Nellis to complain about the Union's actions in forcing his premature discharge. Nellis denied that he had any responsibility for, or knowledge of Smallridge's retirement, and after checking with other union representatives, informed Smallridge that the Union was in no way responsible for Smallridge's termination.

On the following day, Smallridge approached Valenti and Laskavin and accused them of improperly blaming the Union for his retirement. Valenti and Laskavin denied that they had ever attributed Smallridge's termination to the Union, now insisting that it was solely the Company's decision as part of a general layoff.

Subsequently, on April 14, after Smallridge had been told that the Union had nothing to do with his early retirement, Union steward, James Kenyon, in the company of employees Bob Hodges and Ed Botelho, entered the plant service office where Foreman Henry Czarnecki ^{19/} was collecting contributions on behalf of Smallridge. When Hodges asked what these contributions were for, Czarnecki responded that "Smallridge was being retired and since he had two extensions already and the Union had said that anyone who was on extension had to be retired." Czarnecki added that "there ^{20/} was nothing the foreman or the general foreman could do about it."

General Counsel contends that Smallridge's case presents two separate attempts to falsely attribute accelerated retirement of an employee to the Union, which were given wide circulation by Respondent in order to disparage the Union in the eyes of the employees and consequently to wrongfully interfere with the protected rights of the employees.

19/ The Union has never filed a grievance over any of the foregoing events.

20/ Czarnecki, it should be noted, is a foreman in the same department as Smallridge but on another shift. Accordingly, it is clear that Respondent's false accusations regarding the Union's involvement with Smallridge's early retirement had spread.

In conclusion, it is noted that the Amended Complaint was issued consistent with prior "United Aircraft cases" cited above, which show a general hostility toward employee protected rights ". . . demonstrated hostility towards unionism and proclivity towards violating the Act." (United Aircraft Corporation, 179 NLRB 935, 937) and ". . . pattern of discrimination against union stewards [as] perpetrated by the Respondent in prior cases" (188 NLRB No. 96 at p. 3) and ". . . general pattern of anti-union hostility and discriminatory conduct (United Aircraft Corporation v. N.L.R.B., 440 F. 2d 85, 100), all of which are designed to frustrate and disparate the Union's lawful role as bargaining representative.

To the extent that the Board's decision in 204 NLRB No. 133, may change or require a different course of action, including deferral, Counsel for the General Counsel does not deem it appropriate to comment. ^{21/} What has been done here is to lay before the Board in detail all the relevant facts which would be presented by way of an expanded opening statement to an Administrative Law Judge. The final disposition of Respondent's Motion ultimately must rest with the Board.

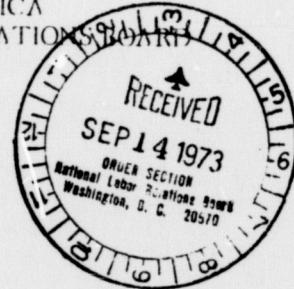
Respectfully submitted,

/s/ S. Anthony diCiero

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^{21/} Counsel does deem it appropriate, however, to note prior decisions involving the instant parties wherein deferral was not allowed, United Aircraft, 180 NLRB 273 (fn. 2); United Aircraft, 188 NLRB No. 96 (fn. 1) upon facts strikingly similar to those presented herein. In addition, Counsel takes note of the Board's decision in National Radio Company Inc., 198 NLRB No. 1, page 20, where United Aircraft Corporation's "pattern of action subversive of Section 7 rights" was used as a comparison of the type of conduct necessary to negate deferral.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD



In the Matter of)
United Aircraft Corporation)
(Pratt & Whitney Division;)
Hamilton Standard Division)
and)
Lodges 700 and 743, International)
Association of Machinists and)
Aerospace Workers, AFL-CIO)

United Aircraft Corporation)
(Pratt & Whitney Division)
and)
Lodge 1746, International)
Association of Machinists and)
Aerospace Workers, AFL-CIO)

Case No. 1-CA-7890

Case No. 1-CA-8626

CHARGING PARTIES' OPPOSITION TO RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT

1. The Company's Motion for Summary Judgment is based on the Board's decision in United Aircraft Corporation, 204 NLRB No. 133 (the Pollack case) decided July 10, 1973. We are today filing a motion for reconsideration in that case. We annex hereto and incorporate herein a copy of that motion without the exhibits, which are of record in this case. Of course, if the motion for reconsideration in the Pollack case is granted, the Company's motion in this case must be denied.

2. With respect to the Company's assertions regarding the basis of the complaint herein, little need be added to the General Counsel's response to the

Company's motion. The General Counsel's description of the basis of his complaint reveals the seriousness of the allegations. We emphasize only the following points:

a. Section 8 of the complaint alleges repeated interference by the Company with employee efforts to process grievances. For the Board to defer to arbitration with respect to such charges "would indeed be to 'turn the blade inward.'" Cf., Graham v. Brotherhood of Firemen, 338 U.S. 232, 237. The denial of information, which is part of the allegations of § 8, must be remedied "in aid of the arbitral process," NLRB v. Acme Industrial Company, 385 U.S. 432, 438. Deferral of the charges in § 8 would cause precisely the kind of delay against which the Supreme Court admonished in NLRB v. C & C Plywood Corporation, 385 U.S. 421, 429-430.

b. Sections 9(a) and (b) of the complaint involve additional incidents of harassment of Union officials. This alone should cause the Board to realize, in light of the established pattern of such harassment, that its sanctions must be applied against this Company with greater vigor, rather than withdraw.

c. As the General Counsel says ". . . the allegation made in Section 9 c of the Amended Complaint illustrates a novel and insidious undermining of the employees' confidence in their bargaining representative; [it] injects a new dimension to Respondent's long list of proven violations of the Act and Respondent's actions directed to employees suggest that Union officials were acting directly contrary to employee interests." As the General Counsel describes it, this allegation "presents two separate attempts to falsely attribute accelerated retirement of an employee to the Union, which were given wide circulation by Respondent in order to disparage the Union in the eyes of the employees and consequently to wrongfully interfere with the protected rights of the employees."

What remedy an arbitrator can provide for the Company's willful and false disparagement of the Union cannot readily be imagined.

3. Even on its own terms, the Company's motion represents an overreach. The relief sought is "an order dismissing the complaint herein, retaining jurisdiction for the sole purpose of entertaining an appropriate and timely motion for further consideration on a proper showing that these disputes have not been resolved with reasonable promptness through grievance and arbitration procedures or that such procedures have not been fair and regular." But the Company omits mention of the other purpose for which the Board retains jurisdiction under Collyer, namely, to assure that the grievance or arbitration procedures "have not * * * reached a result which is repugnant to the Act." 77 LRRM at 1938. The Company apparently wishes to avoid even the possibility of such consideration by the Board.

CONCLUSION

The Motion for Summary Judgment should be denied and the case assigned for hearing before an Administrative Law Judge according to the Board's usual procedures.

Respectfully submitted,

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September 14, 1973

By: Mozart G. Ratner
MOZART G. RATNER

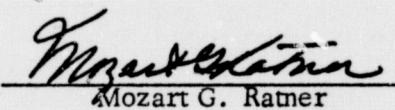
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Respondent's Motion for Summary Judgment has been mailed by first class mail, postage prepaid, this 14th day of September, 1973, to:

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Mozart G. Ratner

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D. C.

In the Matter of)
UNITED AIRCRAFT CORPORATION)
(PRATT & WHITNEY AND HAMILTON)
STANDARD DIVISIONS)
and) Case No. 1-CA-7234
LOCAL LODGES # 1746, 743 and 700,)
INTERNATIONAL ASSOCIATION OF)
MACHINISTS AND AEROSPACE)
WORKERS, AFL-CIO)
.....)
UNITED AIRCRAFT CORPORATION)
(PRATT & WHITNEY DIVISIONS) Case Nos. 1-CA-6952
and) 1-CA-7518
CANEL LODGE NO. 700, INTERNATIONAL)
ASSOCIATION OF MACHINISTS AND)
AEROSPACE WORKERS, AFL-CIO)

MOTION FOR RECONSIDERATION

Pursuant to §102.48(d) of the Board's Rules and Regulations the charging parties hereby move the Board for reconsideration of its Decision and Order in these cases dated July 10, 1973. In that decision the Board dismissed the complaint while retaining jurisdiction according to the formula in Collyer Insulated Wire Co., 192 NLRB No. 150. We urge that on reconsideration the Board decide these cases on the merits and grant full relief to the General Counsel and the charging party in accordance with our prior submissions herein. In support of this petition we state as follows:

1. The Board's decision purports to be in accord with its own prior precedents beginning with Collyer. The Board specifically relies on National Radio Co., Inc., 198 NLRB No. 1, 80 LRRM 1718, quoted at p. 4 of the Board's Decision and Order herein (hereafter "D & O").

In National Radio the Board held for the first time that it would apply the Collyer deferral principle where a violation of §8(a)(3) of the Act has been alleged. But the Board there expressly "distinguished" from the National Radio case "those in which a history of such [union] animus or pattern of action subversive of Section 7 rights has been alleged." (D & O, p. 20). The decision which was cited as exemplifying the circumstances in which deferral would be inappropriate was United Aircraft Corp., 188 NLRB No. 96, 1/ 76 LRRM 1405, to which we shall refer hereafter as the Sherman case.

In the Sherman case the company repeatedly urged the Board to defer to arbitration, but the Board, on interlocutory appeals, and again in its final decision, expressly rejected the request for deferral, reached the merits and concluded that the company had illegally discriminated against a union steward, one Tobin. Even Member Brown, who during his service on the Board was the leading protagonist of deferral to arbitration, said:

"Although Member Brown would normally defer to grievance-arbitration procedures in the type of situation involved here, he concurs in the present case in view of the posture of related

1/ It would be convenient to refer to the various cases in which the company has been charged with and found guilty of unfair labor practices as United Aircraft I, United Aircraft II, etc. But we can no longer keep count. Accordingly, we refer to each of these cases by the name of the Trial Examiner (Administrative Law Judge) before whom the case was tried.

Board decisions in 179 NLRB No. 160 [Weil decision] and 180 NLRB No. 49 [Peterson decision]." 188 NLRB No. 96, p. 2, n. 1, 76 LRRM 1405, 1406, n. 1. 2/

The lengthy course of litigation of the deferral issue in the Sherman case is detailed at pp. 4-7 and Exhibits A-K of the Reply Brief for the Charging Party herein, dated July 7, 1972. The present case involves allegations of identical illegal discriminatory conduct against union stewards. In terms of National Radio it differs from Sherman only in that the "pattern of action subversive of Section 7 rights" that much clearer, so that there is all the more reason to bring this case within the exception to 3/ deferral recognized in National Radio.

2/ Member Brown's views are particularly worthy of attention in light of Chairman Miller's characterization of him as the "father of the Collyer doctrine". "Deferral to Arbitration -- Temperance or Abstinence?" Remarks Before the Georgia Bar Association, May 4, 1973, 83 LRR 72, 73.

3/ Lest there be any doubt as to our position, we observe that we do not agree that National Radio was rightly decided, even on its own facts. Its basic holding is that deferral by the Board to arbitration is warranted if "an asserted wrong is remediable in both a statutory and a contractual forum." 198 NLRB No. 1, 80 LRRM 1718, 1722. It is true, as was there said, that both the Board's and the arbitrator's "jurisdictions exist by virtue of congressional action" (id.). But Congress consciously chose to provide concurrent remedies in order to enlarge, rather than limit, the remedies available to an aggrieved party. See House Conference Report No. 510, 80th Cong. 1st Sess. p. 52. That policy, to insure "all merited relief" (United Steelworkers v. American International, etc., 334 F.2d 147, 152 (5th Cir.)), is respected by the Supreme Court's decisions in Smith v. Evening News, 371 U.S. 195; Carey v. Westinghouse, 375 U.S. 261; NLRB v. C & C Plywood Corp., 385 U.S. 421; NLRB v. Acme Industrial Co., 385 U.S. 432; and NLRB v. Strong, 393 U.S. 357. It was ably articulated by Judge (now Mr. Justice) Blackmun in NLRB v. Huttig Sash & Door Co., 377 F.2d 964, 969-970 (8th Cir.):

"We detect in the two decisions a desire, and perhaps even a policy, on the part of the Court to give impetus to the various ways of settling labor disputes; to expedite these matters; to avoid delay either in the courts or in the arbitration process; to emphasize and protect, in cases of doubt, and to give priority to, statutorily declared rights; to regard as no more than secondary any contract interpretation aspect of what is regarded as basically an unfair labor practice dispute or as merely related to primary Board function under the Act; to take a broad, and not a narrow or technical, approach to the Act and to the multiplicity of channels available for resolving disputes; and not to close the door upon Board expertise when such restraint is clearly not violative of congressional mandate."

Moreover, the Board had twice previously decided charges of discrimination against union stewards on their merits in the face of respondents' insistence on deferral to arbitration. United Aircraft Corp., 179 NLRB 935 (Weil) and 180 NLRB 278 (Peterson). The Weil and Peterson cases were jointly affirmed at 440 F.2d 85, 99-100 (C.A. 2), where the Court said on this point:

"First, United Aircraft argues that the Board should have required the unions to arbitrate their complaints regarding the disciplinary action taken against stewards. The company is unable to cite any case to support its position, and precedent is clearly to the contrary. N.L.R.B. v. Strong, 393 U.S. 357, 89 S.Ct. 541, 21 L.Ed. 2d 546 (1969), is directly in point. Justice White there stated:

'Firing an employee for union membership may be a breach of contract open to arbitration, but whether it is or not, it is also an unfair labor practice which may be remedied by reinstatement with back pay under § 10(c) even though the Board's order mandates the very compensation reserved by the contract.'

393 U.S. at 362, 89 S.Ct. at 545. See also Lodge 743, IAM v. United Aircraft Corp., 337 F.2d 5 (1964), cert. denied, 380 U.S. 908, 85 S. Ct. 893, 13 L.Ed.2d 797 (1965).

"We also note that if the Board had declined to entertain these claims, arbitrators deciding individual cases may never have found the general pattern of anti-union activity which is now revealed to us. While in appropriate cases the district court can order the union to arbitrate a claim of unlawful discharge despite the fact that an unfair labor practice charge is pending, United Aircraft Corp. v. Canel Lodge No. 700, IAM, 436 F.2d 1 (2d Cir. 1970), the jurisdiction of the Board and the arbitrator is concurrent, and the arbitration clause does not oust the Board of jurisdiction."

Nevertheless, in the present case the Board abandons the course which it took in the Weil, Peterson and Sherman cases; and, while purporting to follow National Radio, ignored the limitation on the rule of that case which was there

announced. A decent respect by the Board for its own prior opinions, to say nothing of that of the Second Circuit quoted above, would alone warrant reconsideration in the present case. Moreover, by allowing the company to relitigate the question of deferral which has been fully briefed and argued by these parties on three prior occasions the Board endorses a grave abuse of its own processes, thereby defeating the avowed purpose of the deferral policy of preserving the "limited resources of this Agency" (D & O, p. 6).

2. The Board's Decision is inconsistent with prior precedent also in its failure to "find that the number and nature of these instances of alleged misconduct reflect a pattern of continuation of prior unfair labor practices found against this Respondent," and its conclusion that "we can reasonably rely on contractual machinery satisfactorily to resolve disputes" (D & O, p. 5). In identical circumstances the Board previously found a "general pattern of anti-union activity" which, as the Second Circuit noted, might have escaped "arbitrators deciding individual cases" (440 F.2d at 99).

In the same case the Court rejected the Company's argument, which has now belatedly found favor with the Board, that violations of employee rights somehow lose their significance when they are perpetrated by "individual first-level supervisors and several plant security employees" (D & O, p. 4). See 440 F.2d at 92. Does the Board really think that in a large industrial enterprise (D & O, pp. 4-5) disciplinary suspensions to

employees are issued by the President of the corporation? ^{4/}

3. The Board refers to "the litigious characteristics exhibited in the past by both parties" (D & O, p. 7). We earnestly suggest that the Board, all of whose members were appointed by a President who campaigned on the issue of "Law and Order" should pause to reevaluate a doctrine whereby it tars with the same brush a recidivist offender and its victim. Indeed, the situation is even worse, since at pp. 6-7 of the Board's Decision it vents its sarcasm ("we are not particularly desirous") at the charging party because it "seek[s] adjudication by this Board" of "innumerable individual disputes" -- that is of those acts of the Company which implement the Company's basic objective to undermine and ultimately destroy the Union's ability to function effectively. Why does the Board sit if not to "resolve each such dispute" where, unless the Board exercises its remedial authority, the employees and their union are at the mercy of an employer who has already been adjudicated to have "follow[ed] a general pattern of anti-union hostility and discriminatory conduct"? 440 F.2d at 100.

Even the citations at D & O, p. 2, n. 2 do not list all the cases in which the Company has been found guilty of unfair labor practices by its conduct from 1960 through 1969. See United Aircraft Corp., 181 NLRB

^{4/} Moreover, even the Board's suddenly casual attitude toward "occasional supervisory misconduct" (D & O, p. 5), cannot explain its refusal to remedy other violations, which occurred at higher levels of the Company hierarchy. Of course, when the truly "relevant factors" are placed "in context" (D & O, p. 4) -- namely the historic relationship between these parties--it is not merely inexpert, it is utterly naive to assume that the actions which the Complaint alleges to be unfair labor practices do not reflect and implement fundamental Company policy. See 440 F.2d at 92.

892 (Vose case), enforced 434 F.2d 1198 (C.A. 2). The events which are the subject of the Complaint in this case merely bring the record up to February 1971. The Company's continued flouting of the Act while the present case was in litigation is the subject of cases 1-CA-7890 and 1-CA-8626, discussed at p. 11, infra.

The foregoing history is more than enough to establish the extraordinary enmity which this company has shown to its employees' statutory rights. In fact, however, that policy antedates the Wagner Act, and is recorded in the reports of this Agency as early as 1 NLRB 236. We trace in the margin the Company's publicly documented misconduct ^{5/} from the mid-thirties through 1959.

5/ 1. In 1937, the LaFollette Committee exposed the industrial espionage tactics which the Company used to defeat unionization. S. Rep. No. 46, Part 3, Senate Committee Report on Industrial Espionage, 75th Cong., 2d Sess., 1937, pp. 67-69. The Committee reported (at p. 67):

"The cumulative effects of the myriad spy activities we have discussed create a nightmare of fears in the industrial community. Men who know they are being spied upon lose their morale. For this reason the management frequently lets it be known that spies are in the plant. For example, in the Pratt & Whitney Aircraft Mfg. Co. of Hartford, Conn., a spy of the National Metal Trade Association reported to the management the names of the members who attended union meetings. According to James Matles, grand lodge representative of the International Association of Machinists, as soon as employees would come to work following a union meeting

a foreman by the name of Rice in that department would go over to our members and tell them everything that happened at the meeting, and they should keep their mouths shut and stay away from meetings or they would be fired. This resulted in intimidation, and that was the reason the employees stayed away from meetings."

(footnote continued)

2. In 1936, the National Labor Relations Board found that the Company, at East Hartford, violated Section 8(1) and (3) of the Act by discriminatorily discharging and refusing to reinstate eighteen union officers, committeemen and stewards for participating in a protected work stoppage. United Aircraft Manufacturing Corporation, 1 NLRB 236.

3. Ten years later, in 1946, the Board found that the Company had again, at East Hartford, violated Sections 8(1) and (3) by (a) discriminatorily barring union organizers from access to a roadway bordering the plant; (b) discriminatorily prohibiting distribution of union literature on Company parking lots; (c) promulgating and enforcing rules prohibiting solicitation of membership and distribution of union literature on Company property on the employees' own time; and (d) discriminatorily discharging union adherents. United Aircraft Corporation, 67 NLRB 594.

4. Four years later, in 1950, after full hearing on the complaint, and over the charging union's objections and without its participation, the Board accepted a settlement in which the Company agreed that it would (1) reinstate the two allegedly discriminated against union officers with back pay; (2) bargain collectively in good faith with the International Association of Machinists, and (3) refrain from a variety of specific unfair labor practices, including: (a) discharging and transferring employees to discourage union membership and support of the Union; (b) interrogating employees concerning their union affiliations; (c) warning employees to refrain from joining or assisting the union and threatening them with discharge or discipline if they did not; and (d) engaging in surveillance and soliciting and/or accepting reports from employees as to their own union activities, the activities of others and activities of the Unions. United Aircraft Corporation, Pratt & Whitney and Hamilton Standard Divisions, Cases Nos. 1-CA 609 and 610, settlement agreements approved by the Board, June 13, 1950.

5. In September, 1959, the Company, at its Florida Research and Development Center, after hearing in Board Case No. 12-CA-908, in which the complaint alleged threats of reprisal and discriminatory discharge of three union adherents, entered into a settlement agreement "providing for reinstatement of all the alleged discriminatees" with back pay. Pratt & Whitney Aircraft Division, Etc., 133 NLRB 158, 159-160, 167.

6. A month later, in October 1959, the Board found, the Company discriminatorily, in violation of Section 8(a)(4) of the Act, refused employment to a former employee, Schutta, because he had testified against the Company in Case No. 12-CA-908. The Board ordered the Company to cease and desist from violating Sections 8(a)(1) and (4), and to reinstate Schutta with back pay. Ibid. The Board's order was enforced by the Fifth Circuit, 310 F.2d 676.

7. The Board found that almost simultaneously, on September 16, 1959, at its North Haven plant, where the employees were represented by a UAW Local, the Company launched an illegal prohibition against distribution of union literature by employees in the plant during non-working hours. United Aircraft Corporation, 139 NLRB 39, enforced 324 F.2d 128 (2 Cir.), cert. denied 376 U.S. 951.

4. The Decision and Order herein is based on the Board's belief, notwithstanding the Company's long history of violations, that "there is positive evidence of maturation of the collective bargaining relationship" (D & O, p. 7). The Board does not expressly identify that "evidence" but it apparently is relying on the circumstance that the "Union's claims of unjust suspensions have * * * been arbitrated, the suspensions found unjustified, and the Company has in each instance fully complied with the arbitrator's awards." (D & O, p. 5.)

The initial infirmity in this argument is that it assumes the answer to one of the issues raised by the exceptions to the Trial Examiner's Decision: whether the Company's compliance with the arbitrator's award, though sufficient to remedy its violation of the contract, is also sufficient to vindicate the charging party's statutory rights and the public interest in enforcement of the Act. Though this is a question which goes to the heart of the Board's statutory jurisdiction it is nowhere discussed in its Decision herein. In the circumstances of this case it is clear that mere reversal of the stewards' suspensions after arbitrators' awards is wholly inadequate to eliminate their chilling effect, particularly if those suspensions are viewed, as the employees inevitably view them, against their background. Nor can such awards deter this Company from repeating such misconduct. A formal finding of a violation of law, a cease and desist order, and notice posting are the least that is required, and these are weapons which Congress placed in the Board's armory, but which arbitrators do not possess. Actually, however, in the light of the Company's unparalleled history of venomous anti-union activity, it is clear that the only ultimately effective sanction for its wrongdoing, and the only hope

for deterrence of future violations, is exercise by the Board of its statutory power to institute contempt proceedings under the Court orders against the Company which are already outstanding. That course alone would appropriately utilize "the limited resources of this Agency" (D & O, p. 6), to vindicate the policies of the Act against this persistent and hardened offender.

An even more telling objection to the Board's reliance on the prior arbitration awards is that they do not establish any "maturation of the collective-bargaining relationship," at least if that phrase is intended to mean employer acceptance of the statutory right of its employees to be effectively represented by the Union invindicating their rights and interests when they conflict with those of the employer. The arbitration process rests upon and is capable of finally resolving disputes in a context of mutual respect by the parties for each others' status, and the effective performance of their respective roles. However, where the nature of the dispute calls into question the very existence of that respect by one party for the other, the arbitration process is, at best, a partial, inadequate, palliative. It is in just such cases that exercise of the statutory authority of the Board is indispensable.

Indeed, the theory that the arbitration awards in this case reflect "maturation of the collective bargaining process" actually does no more than crown with success the Company's litigation strategy -- a litigation strategy which it unrelentingly pursued in every available forum ever since the Weil case -- to escape effective prohibition of its anti-union tactics by substituting arbitration awards for statutory sanctions, including contempt, upon which Congress relied to terminate such patterns of illegal conduct.

Far from proving "maturation of the collective bargaining relationship," the persistence of statutory violations by the Company proves exactly the opposite: despite all the Board orders and court decrees, and despite the arbitration awards, the pattern of infringement of employees' statutory rights to incapacitate their bargaining agent continues. In short, there is no "positive evidence" in support of the Board's critical finding.

To be sure, the Board was unaware when it decided this case, that the pattern of illegal company conduct was continuing even after the events shown in this record. But the General Counsel's complaint against the Company in Cases 1-CA-7890 and 1-CA-8626, which the Company has now brought to the Board's attention, reveals, at least prima facie, that insofar as the Company's respect for the law is concerned, nothing has changed. The details underlying the allegations of that complaint are meticulously described in the memorandum filed by the General Counsel in response to the Company's motion for summary judgment in those cases. In that motion the Company urges that these subsequent unfair labor practices also be remitted to arbitration in light of the Board's decision in the present case. The complaint, the motion, and the General Counsel's response are attached as Exhibits A, B and C respectively.

The Board must take judicial notice of these documents, and re-evaluate its position in this case in light of them.

5. Not only do Exhibits A and C negate the Board's optimistic appraisal of the situation at United Aircraft; Exhibit B is a direct consequence of the Board's decision herein. When the litigation strategy which was rejected in Weil, Peterson, and Sherman suddenly succeeded in this case, the Company's immediate response was to urge that the latest charges

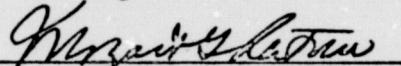
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against it also be Collyerized. The consequence, if this decision stands, and is followed, is to withdraw the protection of the Act from the charging unions and the "well over 40,000 employees" employed by the Company in the state of Connecticut (D & O, p. 4).

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818 - 18th Street, N.W.
Washington, D. C. 20006


By: MOZART G. RATNER

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of *
*
UNITED AIRCRAFT CORPORATION *
(PRATT & WHITNEY DIVISION; *
HAMILTON STANDARD DIVISION) *
*
and * CASE NO. 1-CA-7890
*
* LODGES 700 and 743, INTERNATIONAL *
ASSOCIATION OF MACHINISTS AND *
AEROSPACE WORKERS, AFL-CIO *
*
UNITED AIRCRAFT CORPORATION *
(PRATT & WHITNEY DIVISION) *
*
and * CASE NO. 1-CA-8626
*
* LODGE 1746, INTERNATIONAL ASSO- *
CIATION OF MACHINISTS AND AERO- *
SPACE WORKERS, AFL-CIO *

REPLY OF UNITED AIRCRAFT CORPORATION TO
GENERAL COUNSEL'S RESPONSE TO ORDER TO
SHOW CAUSE WHY RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT SHOULD NOT BE GRANTED

Counsel for the General Counsel has responded to the Board's show cause order in a manner prohibited by the Federal Rules of Civil Procedure, and his response contains a complete distortion of the entire matter.

In the first place, Counsel for the General Counsel, in paragraph 4 of his response, "offers de bene" a lengthy statement of "facts" which he states are "available to support the Amended Complaint and which would, at trial, be offered in support thereof." His so-called "facts", however, are set forth in his response without any supporting affidavit, and constitute,

for the most part, an accusatory diatribe against Respondent, reminiscent of those repeatedly perpetrated by the same counsel in his and his associates' 10-year abortive crusade against this Respondent in United Aircraft Corporation, 192 NLRB No. 62, 77 LRRM 1785 (1971).

Such "facts" as Respondent submitted to the Board in its motion for summary judgment were supported by affidavit. Counsel for the General Counsel has not filed such an affidavit although Rule 56(e) clearly requires that such an affidavit be filed if facts stated in a response are to be relied upon by a court or adjudicatory tribunal in ruling on the motion.^{1/}

In any event, Counsel for the General Counsel's response does not deny any of the facts set forth in Respondent's motion, and does not direct itself to the real issue present in this case. The real issue in this case -- as it was in United Aircraft Corporation, 204 NLRB No. 133 (1973) -- is whether the Board will permit a union to use Board processes rather than contractual grievance procedures including arbitration to decide each and every dispute which inevitably arises in the day-to-day operations of a large company.

Although the General Counsel's response to the Board's show cause order states in paragraph 2 that he "takes no position with regard to" Respondent's motion for summary judgment, it is obvious from the remainder of that response that this statement is at best hypocritical. Obviously, the General Counsel believes that these Unions have no obligation to bargain with Respondent with respect to any disputes which also allegedly involve a violation of the Act.

^{1/} See, e.g., Goldman v. Summerfield, 214 F.2d 858 (D.C. Cir. 1954); 6 Moore's Fed. Prac., Sec. 56.01 /13-14/.

This attitude of the General Counsel simply reflects the Unions' strategy with respect to this Respondent. The Unions have repeatedly refused to arbitrate disputes simply because the General Counsel has issued a complaint concerning such disputes, and have succumbed to arbitration only after Respondent has applied judicial pressure to compel them to honor their contractual commitments.^{2/} The General Counsel's support of the Unions' resistance to its own contractual grievance procedures including arbitration is directly contrary to the Board's direction obviously implicit in its decision, supra, that the parties here "make sensible and effective use of their own procedures to resolve the kinds of disputes involved in this proceeding."

As noted in Respondent's motion for summary judgment, Respondent on July 13, 1973, wrote to the Unions inviting them to submit their pending disputes to the grievance procedure and possible arbitration. The Unions, in an acrimonious reply, have refused to submit to these procedures, stating that the request is "at least premature" (Affidavit, Exhibit A).

Respondent has not filed a charge with the General Counsel, concerning this blatant refusal of the Unions to bargain, for two reasons. First, this Respondent is understandably tired of litigation, and, second, it appears doubtful that the General Counsel -- in view of his historical support of these Unions in their 13-year vendetta with this Respondent --

^{2/} See, United Aircraft Corporation v. Lodge 700, IAM, 314 F.Supp. 371, 74 LRRM 2518 (D.C. Conn. 1970), affirmed 436 F.2d 1, 76 LRRM 2111 (2nd Cir. 1970), cert. den'd, 436 U.S. 935, 76 LRRM 3028 (1971); United Aircraft Corporation v. Lodge No. 743, IAM, 77 LRRM 3136 (D.C. Conn. 1971); United Aircraft Corporation v. Lodge 700, IAM, 77 LRRM 3167 (D.C. Conn. 1971).

would issue a complaint. The General Counsel's response to Respondent's motion would appear to strengthen that doubt. Further, even if the General Counsel did issue a complaint, it is obvious that these Unions would simply litigate that complaint ad infinitum just as they have promised to do with respect to the Board's previous decision.^{3/}

It is submitted that this obvious alliance between the General Counsel and the Unions in open defiance of the Board's clear directions should not be tolerated. Both of these parties should be clearly advised that the Board's policies and those of the Act require that the Unions bargain with Respondent concerning their disputes and that until they make a good-faith effort to do so, the Board will refuse to entertain any complaint against Respondent.

The absurdity of the General Counsel's position is apparent. In his response to the Board's order to show cause, he sets forth (pages 4-6) an alleged unfair labor practice which consists of nothing more than an alleged refusal of Respondent to call a steward or to furnish information which he contends is required under the grievance procedures as set forth in the labor agreements. He states that these incidents are not a "mere contract breach but rather an unfair labor practice" which "frustrated" the employee's approach to the grievance procedure or deprived the Union of information necessary for use in the grievance procedure. At the same time, however, the General Counsel is supporting the Unions' outright refusal to use the

^{3/} In their letter dated July 24, 1973 (Affidavit, Exhibit A), the Unions promise that they shall "in due course, petition for judicial review of the Board's order." Meantime, they have moved the Board to reconsider its decision using the General Counsel's response to Respondent's motion for summary judgment in this case as support for that motion for reconsideration (Affidavit, Exhibit B, pages 11-12).

grievance procedure whenever the Unions contend that a dispute involves an alleged unfair labor practice. Thus, on the one hand, Counsel for the General Counsel would use the procedures of the Board to compel the company to bargain as provided by the contractual grievance procedures, but, on the other hand, he tells the Unions that they can totally ignore the same grievance procedures whenever they desire.

This one-sided administration of the Act is patently improper and directly opposite to the policies of the Act. As the Second Circuit noted in Nabisco, Inc. v. N.L.R.B., 479 F.2d 770, 83 LRRM 2612, 2613 (2nd Cir. 1973):

"[The legislative history shows that the policy underlying the Act intended that the Board would] develop a policy of entertaining under these provisions only such cases alleging violation of contract as cannot be settled by resort to the machinery established by the contract itself, voluntary arbitration or if necessary, by litigation in court. . . Any other course would engulf the Board with a vast number of petty cases that could best be settled by other means. In short the intention. . . in this regard is that cases of contract violation be entertained on a highly selective basis when it is demonstrated to the Board that alternate methods of settling the dispute have been exhausted or are not available."

Here it is only the Unions' intransigence - encouraged by the General Counsel -- which blocks the settlement of these disputes by "the machinery established by the contract itself." The Board should not reward the Unions for such conduct which is obviously contrary to the dictates of Section 8 (b) (3) of the Act.

For the foregoing reasons, the General Counsel's response to the Board's show cause order should be stricken insofar as it relies

J.A. 68

upon unsupported factual allegations and Respondent's motion for summary judgment should be granted.

Respectfully submitted,

Joseph C. Wells
Joseph C. Wells

Michael J. Bartlett
Michael J. Bartlett
1225 Connecticut Avenue, N.W.
Washington, D.C. 20036

Counsel for Respondent,
United Aircraft Corporation

October 5, 1973

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of *

UNITED AIRCRAFT CORPORATION *
(PRATT & WHITNEY DIVISION; *
HAMILTON STANDARD DIVISION) *

and *

CASE NO. 1-CA-7890

LODGES 700 and 743, INTERNATIONAL *
ASSOCIATION OF MACHINISTS AND *
AEROSPACE WORKERS, AFL-CIO *

UNITED AIRCRAFT CORPORATION *
(PRATT & WHITNEY DIVISION) *

and *

CASE NO. 1-CA-8626

LODGE 1746, INTERNATIONAL ASSO- *
CIATION OF MACHINISTS AND AERO- *
SPACE WORKERS, AFL-CIO *

AFFIDAVIT

IN SUPPORT OF REPLY OF UNITED AIRCRAFT
CORPORATION TO GENERAL COUNSEL'S RESPONSE TO
ORDER TO SHOW CAUSE WHY RESPONDENT'S MOTION
FOR SUMMARY JUDGMENT SHOULD NOT BE GRANTED

State of Connecticut
County of Hartford

ss.

October 5, 1973

Nathaniel B. Morse, being first duly sworn, deposes and says:

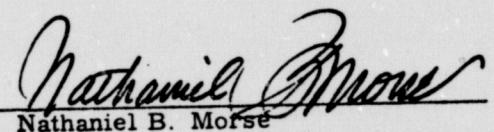
1. I am the same Nathaniel B. Morse whose affidavit was previously submitted in support of the motion of United Aircraft Corporation for summary judgment in the above-captioned cases, and I am familiar with and have personal knowledge of the matters hereinafter referred to in this affidavit.
2. As set forth in my affidavit of July 23, 1973 (page 4 and Exhibit O, thereto), and in conformity with the Company's understanding of the National

Labor Relations Board's decision and direction to the parties in United Aircraft Corporation, 204 NLRB No. 133 (July 10, 1973), I invited the Unions on July 13, 1973, to meet with the Company as soon as possible in an earnest effort to resolve the existing disputes, which comprise the allegations of the complaints in the above-captioned cases, through the parties' contractual grievance and arbitration processes or through a special dispute-solving mechanism to which the parties might mutually agree.

The Unions rejected this offer to amicably resolve these disputes on July 24, 1973, terming the Company's request premature, in that it assumed the validity of the Board's decision and order in the case cited above, and stating that it would seek judicial review of that order in due course (Exhibit A, hereto).

3. On September 14, 1973, the Company, by counsel, was served with a copy of the Unions' motion to the National Labor Relations Board for reconsideration of the Board's decision in the above cited case (Exhibit B, hereto).

4. In all respects the facts set forth in this affidavit are true and correct to the best of my knowledge and belief.


Nathaniel B. Morse

Sworn to before me this ^{5th} day of October, 1973.


Diana L. Natale
Notary Public



INTERNATIONAL ASSOCIATION of MACHINISTS
and AEROSPACE WORKERS

MACHINISTS BUILDING, 357 MAIN STREET, EAST HARTFORD, CONN. 06118

Office of the
 Grand Lodge Representative

CERTIFIED MAIL
 RETURN RECEIPT REQUESTED

Mr. N. B. Morse
 Vice President for Industrial Relations
 United Aircraft Corporation
 400 Main Street
 East Hartford, Ct. 06108

Dear Mr. Morse:

This will reply to your letter of July 13, 1973, suggesting that in "consequence" of the Board's decision in Cases Nos. 1-CA-7234, et al., the parties should now meet in an attempt to work out procedures to "resolve" through the grievance procedure and arbitration the "several disputes" involved in those cases and in Cases 1-CA-8626 and 1-CA-7890.

As you are no doubt aware, it is the Union's position, concurred in by the two dissenting Board Members, that the Board majority arbitrarily, irresponsibly and unlawfully abdicated its statutory function and obligation in this case by refusing to adjudicate and appropriately remedy by judicially enforceable cease and desist order the Company's alleged and proven unfair labor practices. Those practices continue the Company's historic policy and program of harassing Union stewards and preventing the Union's representatives from functioning effectively to vindicate employees' contractual and statutory rights and interests. Even assuming that grievance and arbitration procedures can appropriately adjudicate such violations, they cannot effectively prevent repetition, for arbitrators are not empowered to issue judicially enforceable cease and desist orders. And history proves that, absent judicially approved cease and desist orders, enforceable by contempt sanctions, the Company will not effectively terminate its course and pattern of illegal conduct and will not take the steps necessary effectively to insure against repetition.

What you and the Board majority euphemistically characterize as "several disputes" are, in actuality, the Union's efforts to vindicate its statutory rights by the precise legal method Congress provided for their vindication. As it happens, that method is the only effective

Area Code 203

566-3000

RECEIVED		RESPONSIBILITY	NOTING	INITIAL
JUL 25 1973	INDUSTRIAL RELATIONS			
July 24, 1973	N. B. MORSE			G.W.
	A. K. WILSON		✓	
	A. Z. ZAHN		✓	
	H. W. REED			
	K. E. ENDERSON			
	JCW		✓	✓
	FILE			

J.A. 72

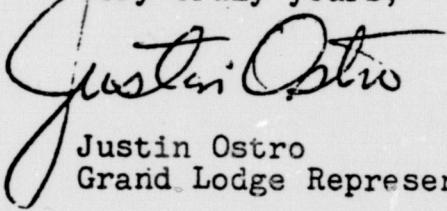
Mr. N. B. Morse

July 24, 1973

avenue of redress, particularly against recidivist employers like United Aircraft, a fact which the Board itself recognized in National Radio Co., 198 NLRB No. 1, footnote 16 and accompanying text.

Accordingly, we consider your request, which implicitly assumes the validity of the instant majority decision, at the least premature. We shall, in due course, petition for judicial review of the Board's order, in the hope of securing the effective relief which Congress mandated against violations such as these.

Very truly yours,



Justin Ostro
Grand Lodge Representative

JO/sd

cc: D.B.R. Sawyer

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

* * * * *

In the Matter of

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION;
HAMILTON STANDARD DIVISION)

and

CASE NO. 1-CA-7890

LODGES 700 and 743, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION)

and

CASE NO. 1-CA-8626

LODGE 1746 INTERNATIONAL ASSO-
CIATION OF MACHINISTS AND AERO-
SPACE WORKERS, AFL-CIO

* * * * *

REQUEST FOR SPECIAL
PERMISSION TO FILE MOTION
TO TAKE OFFICIAL NOTICE AND
RECEIVE NEW EVIDENCE

United Aircraft Corporation, respondent herein,
hereby requests special permission from the Board to
file its motion to take official notice and receive
new evidence, together with the accompanying affidavit
and exhibits. For reasons in support of this request,
respondent states as follows:

1. This matter is now pending before the Board
pursuant to a notice to show cause and order transfer-
ring proceeding to the Board dated August 3, 1973,
which was issued as a result of respondent's motion

for summary judgment filed July 25, 1973.

2. Subsequently, on or about August 3, and September 15, 1973, respectively, the General Counsel and the charging parties filed responses to the show cause notice. On or about October 18, 1973 the respondent filed a reply to the response of General Counsel.

3. Respondent's motion for summary judgment is grounded in the Board's rationale as set forth in United Aircraft Corporation, 204 NLRB No. 133. There the Board refused to adjudicate the day-to-day disputes that inevitably arise between employees represented by the charging parties and respondent's lower level supervision. Accordingly, the Board dismissed the complaint, retaining jurisdiction for the sole purpose of considering a later timely motion that the disputes have not been resolved through the parties' voluntary grievance and arbitration mechanisms with reasonable promptness or that such procedures were not conducted in a fair and regular fashion or the results reached were repugnant to the Act.

4. In its motion for summary judgment, respondent showed that the disputes between the parties raised by the allegations of paragraph 8 of the instant consolidated complaint were submitted to arbitration by the parties

January 24, 1973, and that the respondent and charging parties were then awaiting the resolution of those disputes.

5. On December 18, 1973, Arbitrator I. Robert Feinberg issued his Opinion and Award resolving those disputes. And on January 18, 1973, respondent took affirmative action to comply with the Arbitrator's award insofar as the respondent was found to have violated the collective bargaining agreement. This is evidence which respondent now wishes to bring to the Board's attention. It further evidences the Board's conclusion in United Aircraft Corporation, *supra*, "that the parties' agreed-upon grievance and arbitration machinery has worked - and worked fairly - when given a chance", and provides further support for respondent's position in this case that summary judgment should be granted in conformity with United Aircraft and Spielberg Manufacturing Company, 112 NLRB 1030.

For the foregoing reasons, respondent requests that special permission to file its motion to take official notice and receive new evidence be granted.

J.A. 76

JOSEPH C. WELLS

Michael J. Bartlett

MICHAEL J. BARTLETT
1225 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys For United
Aircraft Corporation

January 28, 1974

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

* * * * *

In the Matter of

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*

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION;
HAMILTON STANDARD DIVISION)

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and

CASE NO. 1-CA-7820

LODGES 700 and 743, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO

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UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION)

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MOTION TO TAKE OFFICIAL
NOTICE AND RECEIVE NEW
EVIDENCE

United Aircraft Corporation, respondent herein,
hereby moves the Board to take official notice in the
above captioned case of the Opinion and Award rendered by
Arbitrator I. Robert Feinberg on December 18, 1973
(Vandervoort Affidavit, Exhibit A), and to receive new
evidence of respondent's continuing compliance with
arbitrators' awards (Vandervoort Affidavit, Exhibit B).

J.A. 78

The Board is respectfully directed to the affidavit of James E. Vandervoort and to the following reasons in support of this motion:

On July 25, 1973, respondent filed a motion for summary judgment in this cause with the Board. In that motion respondent emphasized that the disputes between the parties raised by the allegations of paragraph 8 of the instant consolidated complaint were submitted to arbitration by the parties on May 24, 1973, and that the parties were then awaiting the arbitrator's resolution of those disputes (Vandervoort Affidavit, p. 2).

On December 18, 1973, Arbitrator Feinberg resolved the disputes embraced by paragraph 8 of the complaint through his opinion and award (Id.). Furthermore, to the extent that the Arbitrator's Opinion sustained the Unions' position in these disputes, respondent has taken affirmative action to fully comply with the Arbitrator's Award (Ibid, p.3).

This evidence amply demonstrates, not only that respondent is willing "to honor its contractual commitments dealing with procedures for dispute resolution", but also, and more importantly, that "the parties

agreed-upon grievance and arbitration machinery can be reasonably relied on to function properly and to resolve the current disputes fairly . . . This then is [further] evidence that the parties' agreed-upon grievance and arbitration machinery has worked - and worked fairly - when given a chance." United Aircraft Corporation, 204 NLRB No. 133, slip op. p. 3, 5. Under these circumstances, and in view of the evidence previously submitted in this cause, the consolidated complaint should be dismissed upon respondent's motion for summary judgment. United Aircraft Corporation, supra; Collyer Insulated Wire, 192 NLRB No. 150; Spielberg Manufacturing Company, 112 NLRB 1080.

For the foregoing reasons, respondent prays that its Motion to the Board to Take Official Notice and Receive New Evidence be granted.

JOSEPH C. WELLS
JOSEPH C. WELLS

MICHAEL J. BARTLETT
MICHAEL J. BARTLETT
1225 Connecticut Avenue, N.W.
Washington, D.C. 20036

January 28, 1974

2. As more fully set forth in the affidavit of Nathaniel B. Morse, previously filed in this cause (Affidavit of Nathaniel B. Morse, dated July 23, 1973, paragraph 3, filed in support of Respondent's Motion For Summary Judgment), the disputes between the parties which comprise the allegations contained in paragraphs 8(a) and 8(b) of the instant consolidated complaint were submitted to arbitration before Arbitrator I. Robert Feinberg on May 24, 1973.

3. On December 18, 1973, Arbitrator Feinberg issued his Opinion And Award in which he found that "[..]here was no violation of the agreement in the failure of Foreman Heller to summon a shop steward pursuant to the request of employee James R. Rizner on June 7, 1972 (Exhibit A, p. 19, hereto; paragraph 8(a) of the consolidated complaint). However, Arbitrator Feinberg did find that "[t]he Company violated the agreement by refusing to produce, in the second step of the grievance procedure relating to the grievance filed on behalf of Kenneth R. Roberge, the notebooks maintained by Foreman Edwin Pitney "(Exhibit A, p. 19, hereto; paragraph 8(b) of the amended consolidated complaint).

4. Accordingly, in keeping with the Arbitrator's award in the Roberge grievance, I have informed Lodge 1746 of the Company's willingness to reconvene the second step grievance hearing in the Roberge grievance and produce the notebooks maintained by Foreman Pitney (Exhibit B, hereto).

5. In all respects, the facts set forth in this affidavit are true and correct to the best of my knowledge and belief.


James E. Vandervoort

Sworn before me this
day of January, 1974


Notary Public

-----x

In the Matter of the Arbitration :
between :
UNITED AIRCRAFT CORPORATION, PRATT & :
WHITNEY AIRCRAFT DIVISION : OPINION AND AWARD
and :
INTERNATIONAL ASSOCIATION OF MACHINISTS :
AND AEROSPACE WORKERS, LODGE 1746 :
-----x

OPINION

Under date of January 15, 1973 the Company wrote the Union submitting to arbitration a grievance filed by it on October 30, 1972. The letter listed four issues. Two of the issues and a part of a third issue have not been contested by the Union. The remaining issues, to be here determined, are, as set forth in the letter of January 15, 1973:

"(1) An alleged refusal on June 7, 1972 by East Hartford Foreman Otto Heller to summon a steward pursuant to the request of Employee James Rizner

"(4) . . . [A]n alleged refusal by the company on or about July 3, 1972 to furnish [information requested by Steward Paul Kelly] at the second step of the grievance procedure."

All of the issues originally submitted by the Company to arbitration in its letter of January 15, 1973

were matters concerning which the Union had filed unfair labor practice charges against the Company with the National Labor Relations Board. The Company was informed of the pendency of these charges on October 8, 1972 and on October 30, 1972 and filed a grievance on the matters the Union had challenged before the Board. The Regional Director of the National Labor Relations Board advised the parties, on May 7, 1973, that he would decline to issue a complaint on the issues in the charge other than those set forth above, and the Union consequently stated at the arbitration hearing that it was not contesting the propriety of the Company's action on those issues. Subsequent to the arbitration hearing in this case, and on May 31, 1973, the Regional Director of the National Labor Relations Board issued a complaint against the Company with respect to the two issues here to be determined, which matter is apparently now pending.

At the arbitration hearing the Union argued that the grievance had not been timely filed and, also, that the case was not properly before the arbitrator because the Company sought no affirmative relief. These arguments were not pressed by the Union in its brief.

Each of the issues presented will be discussed separately below.

I

The Company's Refusal To Produce Certain Information At The Second Step Of The Grievance Procedure

This issue arises with respect to a grievance filed by an employee named Kenneth Roberge on June 16, 1972,

contesting the merit, or performance, rating granted to him under the Company's Performance Rating Plan. The grievance reads:

"I grieve that my current merit rating does not correctly evaluate my performance in the following factors: Accuracy; Output; Use of Working Time; Cooperation"

The remedy requested in the written grievance is:

"That my foreman produce and turn over to the Steward and myself copies of all standards and records that he relied upon in making the above rating. I further request that I be rerated in the above factors and placed in the R position of the rate range of my labor grade."

The performance, or merit, rating referred to evaluates an employee with respect to five factors, to wit, accuracy, output, use of working time, application of job knowledge, and cooperation. The previous merit review of Mr. Roberge, effective November 8, 1972, had resulted in granting him a "G" rating with respect to the first two and the last two factors mentioned, and an "E" rating with respect to use of working time. The contested rating, which was issued effective May 1, 1972, lowered his ratings for the factors of accuracy, output and cooperation from "G" to "F" and with respect to use of working time from "E" to "D." Both ratings were made by the employee's foreman, Edwin A. Pitney.

At the first Step of the grievance procedure Shop Steward Paul Kelly participated and discussed the matter

with Mr. Pitney. Pitney explained Roberge's down-grading by stating that he had on several occasions put on his hat and coat prior to the termination of work and had once told Pitney he would rather go on unemployment compensation than work for the Company. It appeared at the arbitration hearing that Mr. Pitney voluntarily maintained three notebooks in which he recorded various aspects of employee performance, one of which consisted of entries relating to the attendance of employees, one of which noted production errors and also contained notations about warnings to Roberge for poor use of working time and absences from work areas, and the third of which contained a rating of Roberge's production time on various jobs as compared with an estimate of the time which would normally be required. At the Step 1 discussion Kelly asked Pitney for the notebooks, but Pitney denied any knowledge thereof.

At the Step 2 meeting, Kelly discussed the grievance with the Assistant to the Manufacturing Manager, John H. Phelps, who represented the Company at that Step. Senior Shop Steward Farley was also present for the Union. Mr. Phelps testified that he asked what information the Union had to substantiate its claim that Roberge had been incorrectly evaluated and that Kelly asked for the foreman's notebook, but that he did not consider it a document that the Company was required to produce under the language of the collective bargaining agreement. Kelly testified that after he presented the grievance he stated that he had not received

any information from the foreman at the first Step and that he "felt it was the obligation of the Company to tell us why he was downgraded." He further testified that Mr. Phelps referred to some "small allegations," "three small things" that had occurred, but would not tell him when they occurred. He testified that when Mr. Phelps stated there was nothing to substantiate the grievance, he told him that "the substantiation for our grievance was in Pitney's notebooks and I asked him to produce them," to which Mr. Phelps replied, "he had no knowledge of any notebooks."

The key language of the agreement is found in that part of Section 1 of Article VII which refers to Step 2, and which reads as follows:

"The company will produce such pertinent existing production, payroll, attendance records, and disciplinary notices pertaining to the employee involved as may be necessary to the settlement of a grievance at this step of the grievance procedure. There shall be no obligation on the part of the company to produce any of the above records except the specific record or records which would prove or disprove a specific factual contention of the aggrieved employee."

Prior to the agreement of December 1, 1971, only the first sentence of the language quoted above was contained in the agreement. The second sentence was proposed by the Company in the 1971 negotiations and ultimately accepted by the Union. According to the testimony, the Company proposed the language because of the "continuing controversy between

the Union and the Company over the scope of documents to be produced at Step 2 merit rating grievances." Excerpts from the transcript of the negotiations reveal that the Company complained that the Union was using the provision as a basis for "a fishing expedition" and that the Company believed that its proposed additional language was necessary to "prevent unnecessary haggling and demands.....for numerous records." The transcript also shows that when the Union objected to the proposal on the ground it would permit the Company "to withhold information that might to some degree help to settle the grievance and you'll determine what's factual and what isn't factual and what will prove or disprove without giving a full disclosure and full facts on what it takes to settle a grievance," the Company replied that "That isn't what it says at all."

The question to be here determined involves the interpretation and application of the quoted language relating to the production of records at Step 2 of the grievance procedure. The Company argues that the Union raised no "specific factual contention" on behalf of the aggrieved employee which could be proved or disproved by the production of a specific record or records; that the Step 2 meeting was conducted by the Union just as if there had been no modification of the contract in the 1971 negotiations; and that the Union was simply seeking to raise a factual issue by reviewing the foreman's notes. The Company also contends that the foreman's notebooks are not "a production record" within

the meaning of the contract and their disclosure at Step 2 of the grievance procedure would not assist in the resolution of the grievance. In support thereof it refers to testimony at the hearing to the effect that there is a distinction between a "production record" and notebooks which may or may not be kept by a foreman; that a production record is a record on a form provided by the Company which there is a prescribed way of completing so that knowledgeable Company persons looking at the record can draw a common understanding from it; that a foreman's notebook is not kept on any form provided by the Company; that some foremen keep notes and others do not; that the Company does not recommend that foremen keep notes. The Company also maintains that at Step 2 neither the foreman nor the employee is a contractually designated participant and a foreman's notebooks, at least those of Foreman Pitney involved in this case, are not intelligible without explanation by the foreman involved or the employee, neither of whom is present.

The Union argues that the Company violated the agreement by refusing to produce the foreman's notebooks. It contends that records are essential to the processing of grievances and the failure to produce records flouts the Company's promise, as set forth in Section 1 of Article VII of the agreement, to "make an earnest effort" to resolve differences arising from the "interpretation, application,

or compliance with the collective bargaining agreement"; that any grievance procedure requires that a certain amount of information be produced in order to make the grievance procedure effective.

The Union also argues that Foreman Pitney's notebooks are records producible under the contract, that is, "production records" or "attendance records" and that the Company's assertion that a foreman's notes are not Company records has no merit. It also argues that the Company was not justified in its refusal to produce any records at all concerning Roberge on the ground that no "specific factual contention" was made, and that such a position, if sustained, would prevent the Union from contesting the specific, undisclosed facts on which the Company bases its performance rating and deprive the Union of the opportunity to put those facts in their proper broader context. It concludes by stating also that the clause which was added in 1971 and upon which the Company relies should be strictly construed against the Company, since the Company drafted its language.

Two questions basically are here presented: (1) whether the terms "production records" and "attendance records," as used in the agreement, include the foreman's notebooks in the instant case; and (2) if so, whether the

*The opening paragraph of Section 1 of Article VII reads as follows: "SECTION 1. In the event that a difference arises between the company, the union or any employee concerning the interpretation, application or compliance with the provisions of this agreement, an earnest effort will be made to resolve such difference in accordance with the following procedure which must be followed."

Company had the obligation to produce them in order to prove or disprove a "specific factual contention."

With reference to the first question, as to the nature of the notebooks, the Company argues that a "production record" is a record on a form provided by the Company which there is a prescribed way of completing. In other words, it argues that the term was intended to apply only to formal Company records required to be maintained on pre-established forms. The foreman's notebooks obviously do not meet that test. They are loose, informal notes, maintained by the foreman for his own use. Some foremen make such notes and some do not.

However, it may not be said that the foreman's notebooks, if kept, are not production or attendance records within the meaning or language of the agreement. A supervisor is instructed, as a matter of Company policy, in the Company's Supervisor's Employee Relations Manual, to refer to "any applicable notes or data" in making performance ratings. Foreman Pitney's notes recorded information which obviously related to employee performance. Thus, one notebook recorded whether employees were absent, talking, working, or away from their work stations when observed, a second notebook recorded Roberge's production errors and warnings about absence and poor use of working time, and a third notebook recorded Roberge's production time, compared to a time factor, on various jobs. Foreman Pitney testified that he used the notes as "memory joggers" when making his

merit ratings, and that he referred to them prior to discussing merit ratings with his Group Supervisor.

There is nothing in the agreement which restricts producible records to those kept on formal, Company prescribed pre-printed forms. Foreman Pitney made and maintained his notes in the performance of his duties, and in the regular course of business. They were relied upon in the making of merit ratings. While they may not be "production records" for other purposes, or in other types of grievances, in the opinion of the arbitrator they are included in the type of records described in the agreement to be produced at Step 2 in performance rating grievances.

At the hearing the Company referred to the fact that in the 1968 negotiations the Union recognized a distinction between foremen's notes and more formal production records. In those negotiations the Union proposed that each side should produce "any pertinent information" at each step of the grievance procedure, but such proposal was not adopted. The Company pointed out that in the discussion at that time the Union stated it was talking about foremen's notes. The discussion in the 1968 negotiations is not here conclusive, since the arbitrator is not called upon to interpret and apply the language proposed by the Union in those negotiations. Rather, the issue relates to language which was adopted in the 1971 agreement. Such language should be applied in its ordinary sense, as it is believed is done here.

The second question is whether the Company was required to produce Foreman Pitney's notebooks to prove or disprove a "specific factual contention." The Company argues that the Union raised no specific factual contention which could be proved by the production of specific records, but merely sought to raise an issue by reviewing the foreman's notebooks. Here too the arbitrator cannot agree. The grievance itself raised a "specific factual contention." The grievance contends that the new merit rating improperly rated the performance of Mr. Roberge with respect to the factors of accuracy, output, use of working time, and cooperation. These are factual matters. In addition, at the Step 1 meeting a "specific factual contention" was raised with respect to Roberge's attendance, based upon the foreman's statement that he frequently quit work early. The entries in the notebooks dealt, in part, with attendance.

The Union seldom has detailed information about employee performance. The basis of an employee's performance or merit rating lies peculiarly within the knowledge of the Company and unless appropriate documents, if they exist, supporting such rating are produced, the Union can not properly contest the rating or raise any question relating to particular incidents. The review of a performance rating in which an employee is downgraded is similar to a review of a disciplinary case; unless the employee is given the basis for the discipline (which he usually is) the

Union is not in a position to contest it, other than by stating generally that there was no basis for the discipline and that the employee's performance was in all respects proper. It is true that the Union cannot make a broad request for any and all records relative to a merit rating, but, nevertheless, if the Union relates the records requested to a factual controversy as to whether the grievant's cooperation, production performance or attendance had deteriorated during the rating period, the records relating thereto, upon which the Company relied, should be produced. No "serious effort" can be made to resolve such a difference without reference to the documents and records bearing on those facts. In addition, the Company's interpretation of the words "specific factual contention" would seem to be in conflict with the apparent assurance during the negotiations to the effect that relevant information that might help to settle the grievance would not be withheld.

The Company also argues that since the foreman is not a contractually designated participant at the Step 2 meeting, it should not be required to produce a foreman's notebooks at those proceedings, since such notebooks may be unintelligible without explanation by the foreman. However, the designation of certain persons as official representatives of the parties at the Step 2 meeting does not necessarily preclude the calling of other persons who may be necessary to interpret or explain documents there referred to. Thus, for instance, the presence of other persons may be necessary to interpret and explain documents about the

J.A. 95

use of which there may be no controversy at all. The exclusion of such persons might well make a discussion at Step 2 sterile.

It is consequently determined that the Company violated the agreement by refusing to produce, in the second step of the grievance procedure relating to the grievance filed on behalf of Kenneth R. Roberge, the notebooks maintained by Foreman Edwin Pitney.

II

The Refusal Of The Foreman To Summon A Steward Pursuant To A Request Of Employee James R. Rizner

The agreement between the parties provides, in Step 1 of Section 1 of Article VII, as follows:

"Step 1. An employee having such a grievance or complaint may, after notice to his immediate supervisor, take it up either directly with his foreman or with the shop steward who shall take it up with the employee's foreman. Any such discussion shall be as brief as possible.

"The provisions of this section shall not apply in the case of a grievance concerning the suspension or discharge of an employee. No steward shall be called in the case of a grievance involving any other disciplinary action until the administration of such action shall have been completed nor shall a steward be called for an employee who alleges he is being improperly laid off.....

"The shop steward shall be given an opportunity to be present at the adjustment of a grievance arising under the terms of this agreement which is presented to the foreman directly by an employee; provided, however, a shop steward shall not be paid for time so spent."

The agreement also provides that shop stewards will receive pay for handling grievances or complaints as

described in Article VII, Section 1, at their regular base wage, excluding overtime, but not to exceed two hours in any work week.

It thus clearly appears that an employee who desires to take up "a grievance or complaint," may request that a shop steward be called. This requirement is affirmed in the Company's Supervisor's Employee Relations Manual, which instructs supervisors to provide a shop steward "whenever an employee indicates that he has a grievance or a complaint which he wishes to discuss with a shop steward."

On May 19, 1972 an employee named James R. Rizner filed a grievance complaining about his merit rating. His foreman, Otto Heller, denied the grievance at Step 1. The grievance was heard at the second step on June 6, 1972. At that meeting a Company official indicated that Rizner had tried to start a fight on the job and had to be restrained by two employees. The Union thereupon withdrew the grievance at the meeting "without prejudice."

Foreman Heller testified that at 7:00 A.M. the following day Rizner asked him to get him a shop steward and Heller told him that he would get back to him. He then called the Personnel Office and was advised that the Union had withdrawn the grievance and that if the request for the shop steward related to the merit rating grievance it should be denied, because it was "a dead issue," but that if it concerned anything else a shop steward should be called.

Heller further testified that at 8:15 A.M. he proceeded to Rizner's work area and asked Rizner if the request involved the grievance that was settled last night, to which Rizner replied in the affirmative, and that he then stated he could not acknowledge his request for a steward; that Rizner then said that he was not satisfied with what had taken place at the second step meeting, since it was untrue. Two other times during the day Rizner brought up the same question and was finally told by Heller that he should go to the Union for an answer as to how to proceed.

Mr. Rizner testified that he was told on the night of June 6, 1972 that the Union had withdrawn his grievance because a Company representative reported that he had been in a fight in which he had to be restrained by two employees; that he denied that any such incident had occurred and was advised by a steward "to see the foreman and start this whole procedure over again"; that the next day he requested Foreman Heller to provide him with a steward; that he accused Heller of lying to the Personnel Department about his being in a fight; and that Foreman Heller told him to forget the whole thing. He further testified that he told Foreman Heller he wanted his grievance "re-opened." A shop steward was never called.

The Union argues that the request of an employee to correct an unfavorable statement in a Company record is a grievable matter and requires the service of a shop steward and that Rizner was thus denied access to the grievance

machinery; that Rizner not only wanted to re-open the merit rating grievance, but also to "correct the record" and, even if the Company had no obligation to call a steward with respect to the merit rating grievance, it had an obligation with respect to the latter. In any event, it argues, Rizner was attempting to re-open his merit rating grievance and was entitled to the presence of a steward and the prior withdrawal of the grievance was merely a defense which the Company might raise on the merits in the grievance procedure; that the Company does not have the right to make its position effective by refusing to call a steward.

The Union also argues that the Company's promise in the agreement to make an "earnest effort" to resolve grievances reinforces the plain language in the contract establishing that the Company's opinion that an employee has no grievance does not license a refusal to call a steward. The Company can not be the sole judge, it states, of what constitutes a grievance or complaint; if that were so, the Union's contractual right to represent the employees in grievances would be illusory. It concludes that the failure to call a steward at employee Rizner's request constituted a violation of the agreement.

The Company argues that the request of Rizner for a steward was "at cross purposes with the entire framework of the grievance procedure." It maintains that the grievance here had left the jurisdiction of the foreman and been committed to higher authority and that Rizner's request for

a shop steward to talk with the foreman concerning his complaint about the action of the Company representative at the second step of the grievance procedure ignored the fact that a foreman cannot reverse or modify action taken at the second step. It contends that the steward with whom Rizner spoke should have known that the contract provides for filing of grievances by the Union at the third step, which, if done, would have placed in issue with a superior the propriety of the statements made by the Company representative at the second step and that this was the appropriate alternative under the contract. It concludes by arguing that the Company justifiably declined Rizner's request for a shop steward in circumstances where it would be a futile and unnecessary act.

Clearly, an employee has a right to the presence of a shop steward when filing a "grievance or a complaint." The words "grievance or complaint," as used in the agreement, refer back to the definition of a grievance set forth in Section 1 of Article VII, that is, "a difference concerning the interpretation, application or compliance with the provisions of this agreement."

The issue here presented does not involve the basic right of an employee to have a steward present when he wishes to discuss a grievance, about which principle there is no dispute. Mr. Rizner wished to discuss his merit rating grievance, which grievance, however, had already been disposed of at the second step of the grievance procedure.

The "record" which he wished to correct was merely a record of the proceedings relating to that grievance. He was not raising a new grievance and the foreman can be excused for believing that Rizner was unhappy with the disposition of his grievance and wanted to discuss it all over again.

It is true that the grievance was withdrawn "without prejudice." Consequently, the Union or the employee had the right to raise it again, or re-open it. Just how that could or should be done was not made clear. Assuming the words "without prejudice" permitted the employee to start all over again at the foreman's level, it did not appear that the foreman was aware of that, or that he knew that the grievance could be re-opened. Realistically, it would seem that any such action should be taken at the same level of authority which effectuated the withdrawal, or at a higher level.

It is not believed that under the peculiar circumstances of this case there was any conscious attempt by the foreman to deny to Rizner, or any other employee, the right to the presence of a shop steward when a new grievance or complaint is filed, which right is affirmed by the language of the agreement. At the most, there was a misunderstanding as to the proper procedure to be followed. It cannot be said that the Company was attempting to deny an employee the right to file a grievance on the ground that it lacked merit, by refusing to call a steward. Rather, the foreman believed that the complaint which Rizner desired to discuss was one

which had already been processed under the grievance procedure, and acted in good faith on that basis.

It is consequently concluded that there was no violation of the agreement in the failure of Foreman Heller to summon a shop steward pursuant to the request of employee James R. Rizner on June 7, 1972.

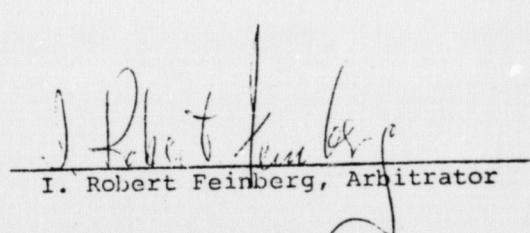
AWARD

I, the undersigned, to whom was submitted for determination certain issues in dispute between the parties hereto, having duly heard the proofs and allegations, and after due deliberation, award as follows:

1. The Company violated the agreement by refusing to produce, in the second step of the grievance procedure relating to the grievance filed on behalf of Kenneth R. Roberge, the notebooks maintained by Foreman Edwin Pitney.

2. There was no violation of the agreement in the failure of Foreman Heller to summon a shop steward pursuant to the request of employee James R. Rizner on June 7, 1972.

Dated: New York, N. Y.
December 18, 1973.


I. Robert Feinberg, Arbitrator

J.A. 102

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On the 18th day of December, 1973, before me personally appeared I. ROBERT FEINBERG, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Ruth Gromer

RUTH GROMER
Sergeant, County of New York
No. 111-12345678
Qualified Notary Public
Certified Notary
Tc

Exhibit B

U
A

January 18, 1974

Mr. George H. Darrell
Chairman, Shop Committee
Industrial Aircraft Lodge No. 1746
IAMAW
357 Main Street
East Hartford, Connecticut 06113

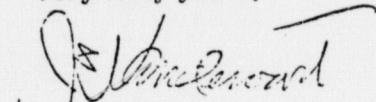
Dear Mr. Darrell:

In an arbitration award dated December 18, 1973, Arbitrator I. Robert Feinberg found:

"The company violated the agreement by refusing to produce in the second step of the grievance procedure relating to the grievance filed on behalf of Kenneth R. Roberge the notebooks maintained by Foreman Edwin Pitney."

In keeping with that decision, the company is prepared to reconvene the second step hearing in the grievance of Kenneth R. Roberge which was the subject of that arbitration. I suggest that it be placed on the agenda of the second step meeting of January 29, 1974.

Very truly yours,


J. E. Vandervoort
Group Director,
Industrial Relations

JEV:gma

cc: Messrs. W. E. Hall
M. H. Lee
J. P. Quinn

Registered - Return Receipt No. 143369

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of)
United Aircraft Corporation)
(Pratt & Whitney Division;)
Hamilton Standard Division)
and) Case No. 1-CA-7890
Lodges 700 and 743, International)
Association of Machinists and)
Aerospace Workers, AFL-CIO)

United Aircraft Corporation)
(Pratt & Whitmey Division))
and) Case No. 1-CA-8626
Lodge 1746, International Asso-)
ciation of Machinists and Aero-)
space Workers, AFL-CIO)

CHARGING PARTIES' RESPONSE TO RESPONDENT'S REQUEST
FOR SPECIAL PERMISSION, ETC. AND CROSS-MOTION OF
CHARGING PARTIES TO RECEIVE NEW EVIDENCE

Lodges 700, 743, and 1746, International Association of Machinists and Aerospace Workers, AFL-CIO, charging parties herein, respectfully file the attached response to the captioned requests and motion of respondent United Aircraft Corporation and simultaneously request leave to file this cross-motion to receive new evidence.

1. Charging parties have no objection to the Board's receipt of the new evidence submitted by the respondent or to the Board's taking official notice of the Arbitrator's Decision and Award referred to in the Company's motion.
2. In order more fully for the Board to appreciate the significance of these documents, and as explained more fully in the attached memorandum,

charging parties respectfully request that the Board receive into evidence
the attached Affidavit of George B. Driesen, Esq.

Respectfully submitted,

PLATO E. PAPPS
Machinists Building
Washington, D. C. 20036

MOZART G. RATNER

GEORGE B. DRIESEN

RATNER and DRIESEN, P.C.
818 - 18th Street, N. W.
Washington, D. C. 20006

Attorneys for Charging Parties

February 19, 1974

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Respondent's Request for Special Permission, etc., and Cross-Motion of Charging Parties to Receive New Evidence has been mailed by first class mail, postage prepaid, this 19th day of February, 1974, to:

Robert S. Fuchs, Esq.
Director, First Region
National Labor Relations Board
Bulfinch Building
15 New Chardon Street
Boston, Massachusetts 02114

Joseph C. Wells, Esq.
1225 Connecticut Avenue, N. W.
Washington, D. C. 20036

Joseph C. Wells, Esq.
c/o Nathaniel B. Morse
United Aircraft Corporation
400 Main Street
East Hartford, Connecticut 06108

Mozart G. Ratner

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of)	
)	
United Aircraft Corporation)	
(Pratt & Whitney Division:)	
Hamilton Standard Division))	
)	
and)	Case No. 1-CA-7890
)	
Lodges 700 and 743, International)	
Association of Machinists and)	
Aerospace Workers, AFL-CIO)	

United Aircraft Corporation)	
(Pratt & Whitney Division))	
)	
and)	Case No. 1-CA-8626
)	
Lodge 1746, International Asso-)	
ciation of Machinists and Aero-)	
Space Workers, AFL-CIO)	

AFFIDAVIT

City of Washington) ss:
District of Columbia)

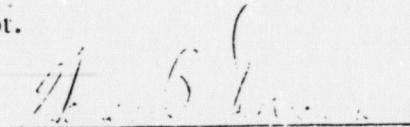
Comes now, George B. Driesen, attorney for charging parties
Lodges 700, 743 and 1746, International Association of Machinists and Aero-
space Workers, AFL-CIO, who deposes and says:

1. That he represented Lodge 1746, International Association of
Machinists and Aerospace Workers, AFL-CIO, in the arbitration proceeding
which eventuated in the arbitration decision which respondent has asked the
Board officially to notice.
2. That the document attached hereto as Exhibit A is an excerpt from
Company's Exhibit 3 and that it was represented to be (and upon information and
belief affiant states that it is) a transcript of the negotiations which led to the
execution of the 1971 Collective Bargaining Agreement between respondent

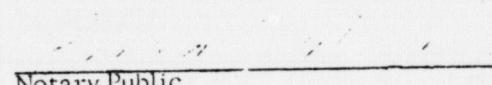
J.A. 107

and Lodge 1746, International Association of Machinists and Aerospace
Workers, AFL-CIO.

Further affiant sayeth not.


GEORGE B. DRIESSEN

Subscribed and sworn to before me this 15th day of February, 1974.


Notary Public

My Commission expires:

EXHIBIT A

In Re:

LABOR NEGOTIATIONS BETWEEN
UNITED AIRCRAFT AND
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS

November 24, 1971
Hilton Hotel
Hartford, Connecticut

FOR THE UNION:

Justin Ostro,
Grand Lodge Representative
District #91 IAMAW
357 Main Street
East Hartford, Connecticut

FOR THE COMPANY:

N. B. MORSE	Industrial Relations Director
W. H. McLAUGHLIN	Industrial Relations Administrator
J. E. VANDERVOORT	Industrial Relations Administrator
F. F. SCHIRM	Personnel Manager, Pratt & Whitney Aircraft
W. E. HALL	Assistant Personnel Manager, Pratt & Whitney Aircraft

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additional language. The language we would like to add-- the present language reads, "The meeting of the shop superintendent shall be held once a week if necessary." We'd like to replace the period at the end of that and insert a comma and add the words "on the shift on which the grievance arises." So that it would read, "The meeting of the shop superintendent shall be held once a week if necessary on the shift on which the grievance arises."

MR. MORSE: Okay.

MR. OSTRO: The third paragraph, the Company has another proposal and we reject the Company's proposal because again it violates our statutory rights to necessary information. We want the present language of the contract.

MR. MORSE: Here you are rejecting the language that there be no obligation on the part of the Company to produce any of the records that are delineated above and have been delineated for years in the contract but the Company, based upon the first time again, experience, in the life of this contract, stated that the intention of this clause was never to make it a fishing expedition but rather to produce any of the above records which would prove or disprove a specific factual contention of the aggrieved employee as opposed simply a broadcast request for any and all records which has been the approach that

the Union has chosen to undertake during the life of this contract, which, of course, was the only reason for the Company's suggestion to again state with some specificity what the original understanding of the parties and the historic pattern and practices have been, and you are stating that you do not accept the Company's clarification as presented in their Section 1, Step 2, final paragraph.

MR. OSTRO: For the reasons mentioned.

MR. MOONEY: Well, the Company doesn't agree with those reasons that it violates your statutory rights.

MR. MORSE: I made a statement on Wednesday in that when you were not here Mr. Mooney, that perhaps should be repeated. I stated that since it was sounding sort of like a victrola record, Justin was using it, if not all, certainly 90+% of the situations that I just wasn't going to each instance burden the record which indicated to him that we didn't agree with his view of who was violating whose virginity or whatever and I don't know whether a comparable statement is, in your judgement, satisfactory now since I think--

MR. MOONEY: We'll take a continuing exception.

MR. MORSE: That's the phrase I used yesterday.

MR. OSTRO: In Section 1, Step 3 (a), the Union withdraws its proposal and accepts the Company's counter-proposal to leave the entire Step 3 as is in the present

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of)
United Aircraft Corporation)
(Pratt & Whitney Division;)
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United Aircraft Corporation)
(Pratt & Whitney Division))
and) Case No. 1-CA-8626
Lodge 1746, International Association of Machinists and Aero-)
Space Workers, AFL-CIO)

MEMORANDUM IN SUPPORT OF RESPONSE TO
RESPONDENT'S MOTION TO RECEIVE ADDITIONAL
EVIDENCE AND CHARGING PARTIES' CROSS-MOTION
TO SUBMIT ADDITIONAL EVIDENCE

It is the position of the charging parties that respondent Company's motion to take official notice and receive new evidence should be filed as requested, and that said motion should be granted, and that the Arbitration Opinion and Award (hereafter "Award") tendered as Exhibit A to the Company's motion should be received in evidence. We disagree, however, with the conclusion which the Company would draw from that Award -- that the complaint should be dismissed. On the contrary, the Award requires that the Board a) deny the Company's pending motion for summary judgment; b) find with respect to the allegations in Para. 8(b) of the Amended Complaint that the Company has

violated §§ 8(a)(1) and 8(a)(5) of the Act; and c) enter a cease and desist order and an appropriate remedy, the nature of such remedy to be determined after a hearing in which the circumstances and motivation of that unfair labor practice charged can be fully explored, in light of the Company's history as a recidivist offender against the Act. A hearing should of course also be held with respect to the various allegations in Para. 9 of the Amended Complaint which are not at all affected by the Award. In support of our position we state as follows:

1. We agree with the Company that Arbitrator Feinberg's opinion and award (hereafter the "Award") is relevant in this proceeding and that the Board can properly place that Award in evidence and take official notice thereof. Because the Award has been rendered, the allegations of Paras. 8(a) and 8(b) of the complaint are now governed by Spielberg Mfg. Co., 112 NLRB 1080, and decisions discussing the effect if any to be given an award, rather than Spielberg's spurious offspring, Collyer Insulated Wire Co., 192 NLRB 837 and subsequent enlargements of Collyer which require arbitration prior to a Board determination.

2. Contrary to the Company's view, dismissal of an unfair labor practice complaint does not follow automatically upon the rendering of an arbitration award with respect to a dispute which is the subject of the unfair labor practice complaint, even if the arbitral procedures have been fair and regular. Rather, the Board's duties in a given case depend on what the arbitrator has determined. That was the understanding of the Supreme Court when it approved Spielberg in Carey v. Westinghouse, 375 U.S. 261, and particularly the discussion therein of Board cases at 270, n. 7 and 271. We thus turn our attention to the two major points established by the arbitration award herein with respect to the allegations in Para. 8(b) of the Amended Complaint:

1/ Without conceding that the Award is dispositive, we choose not to press Para. 8(a) of the complaint.

First, the Company did, as alleged, refuse to allow the union to examine Foreman Pitney's notebook and other information relating directly to Roberge's merit rating at the second step of the grievance procedure. ^{2/} Second, the Company ^{3/} was not privileged by the collective bargaining agreement to withhold information.

3. It is a well-settled corollary of the Spielberg doctrine that the Board will not defer to an arbitrator's award with respect to matters which the arbitrator did not consider. See, e.g., John Klann Moving & Trucking Co., 170 NLRB 1207, enf'd, 411 F.2d 261, 263 (6th Cir.), cert. denied, 396 U.S. 935; Milne Truck Lines, 171 NLRB 226, 232; Monsanto Chemical Co., 130 NLRB 1097, 1099. Here the arbitrator was concerned only with whether the contract was violated and with the proper remedy for a contractual violation. He had no jurisdiction to consider whether the Company had violated the Act, and if so what should be the remedy for the statutory violation. But the Board does have an affirmative statutory obligation under § 10(c) to remedy violations of unfair labor practices which it has found in order to effectuate the purposes of the Act. National Licorice Co. v. Labor Board, 309 U.S. 350, 364; NLRB v. Rutter-Rex Mfg. Co., 396 U.S. 258, 262; International Woodworkers, etc. v. NLRB, 127 App. D.C. 81, 83-84, 380 F.2d 628, 630-631.

4. The facts established by the award compel the finding that the Company violated §§ 8(a)(1) and 8(a)(5) by withholding information from the union. NLRB v. Acme Industrial Co., 385 U.S. 432. A cease and desist order and notice

2/ See General Counsel's Response To Order To Show Cause, Etc., p. 5.

3/ The arbitrator found that the Company had breached the agreement by withholding the information; it follows a fortiori that even if the union could have waived its statutory right to obtain the information, it did not do so.

posted is the absolute minimum remedy for such a violation. In the circumstances of this case, however, that remedy is clearly inadequate.

In our view there should be a hearing at which it can be shown that this unfair labor practice was committed in furtherance of the Company's historic and continuing effort to undermine the union as bargaining representative. The circumstances of this unfair labor practice, the other unfair labor practices alleged in this complaint, and the Company's previously adjudicated unfair labor practices all point to the same conclusion.

5. But for the Board's decision in United Aircraft Corp., 204 NLRB No. 133 (hereafter the "Pollack case"), it would not be necessary for us to say more. Given the Award, the Company's violation of the Act and the Board's duty, are clear. But in the Pollack case the Board refused to find unfair labor practices or to impose a remedy even though, with respect to some of the allegations of the complaint an arbitration award against the Company had already been entered. It is difficult to present any reasoned or principled argument in a universe of discourse which includes both the National Labor Relations Act and the Pollack case as its premises for the two are mutually inconsistent. Accordingly, we have sought judicial review of the Pollack case. But we believe that there are several reasons why even Pollack does not require that the Company's motion be granted. First, we refer to our prior opposition to the Company's motion for summary judgment as well as to the General Counsel's response to that motion. Second, we note that the particular problem in this case -- the effect of an award already rendered -- although presented in the Pollack case was not discussed. The Board should adhere to the precedents discussed in Para. 3, supra, rather than the unreasoned result on this phase of the case in Pollack. Finally, the Board is not required to adhere to Pollack and

should take this opportunity to overrule it and return to the better-reasoned course of the Weil, Peterson and Sherman cases, discussed at pp. 2-5 of our motion for reconsideration in Pollack, which was incorporated in our opposition to the motion for summary judgment herein. This return to the older precedents is the better course of wisdom.^{4/} That result is particularly appropriate because the Pollack decision was reached on the basis of an evaluation of the parties' relationship which the award tendered by the Company further demonstrates to have been unduly optimistic. In Pollack the Board stated that it "continue[s] to believe that an exploration of the nature of the relationship between the parties is relevant to the question of whether in a particular case we ought or ought not defer contractually resolvable issues to the parties' own machinery." (Slip op. 2-3.) Here, the dispute cannot be left to the "parties' own machinery"; it requires the exercise of the remedial powers of the Board in the public interest. In order that this be fully understood, and as a partial offer of proof of what we would show at a hearing, we now discuss the implications of the award.

6. In 1970, during what the Pollack case optimistically characterizes as the "mature" period of the parties' relationship, the union told the Company that in order to make the grievance machinery work, it needed access inter alia to portions of foremen's notebooks wherein are recorded facts underlying merit ratings. The Company refused to produce them. See Pollack case, TXD pp. 16-20. It argued in each instance that the union had not produced evidence of "specific facts" showing that the merit rating was incorrect. In August, 1970, a charge was filed alleging that the Company's withholding of that information violated the Act.

4/ Compare Alexander Milburn Co., 78 NLRB 747, overruled Symns Grocer Co., 109 NLRB 346, in turn overruled Perma Vinyl Corp., 164 NLRB 968, approved Golden State Bottling Co. v. NLRB, 84 LRRM 2839 (U.S. Dec. 5, 1973).

While proceedings on that charge were pending, contract negotiations got under way. As the Award shows, the Company there succeeded in compelling the union to agree to a provision restricting the unions' access to records "which would prove or disprove a specific factual contention of the aggrieved employee." The union had objected that the proffered language would enable the Company to withhold information that "might help settle the grievance" and left the decision as to when there was a factual issue warranting disclosure entirely up to the Company, but the Company denied that this was what its language intended (Award, p. 6). During the negotiations the Company also assured the union that the new language would not deprive it of any statutory right. (Exhibit A to Driesen Affidavit.)

There matters stood when Administrative Law Judge Pollack issued his decision on April 17, 1972, holding that failure to disclose foremen's notes bearing on a merit rating violates the Act this Board administers, and that they are "production records" producible under the contract. TXD, p. 22. He also pointed out that the Company's contention that the union must produce facts to show that the documents it needs are "pertinent" and "necessary" to the settlement of the grievance "would nullify the union's statutory right to receive information relevant and necessary to the intelligent processing of a grievance"

Id. at 21.

A party not bent on withholding information would then have ended the controversy over foremen's notebooks in merit rating grievances. This Company did not. On June 16, 1972, it reasserted its prior position in a merit rating grievance. (Award, p. 2.) It defended that position in the face of Board charges filed some months later in this case and through the third and fourth steps of the grievance procedure, rehearsing anew the arguments made in Pollack

(Award, pp. 6-7) and relying heavily on the new contract language it had drafted for insisting upon the "specific factual contention" which the Administrative Law Judge said deprived a union of its statutory right to information needed to settle grievances (id. pp. 5-6).

Now the arbitrator has told the Company what it, the unions, and the Board have long known: 'No 'serious effort' can be made to resolve such a difference [over a merit rating] without reference to the documents and records bearing on these facts" -- i.e., a "grievant's cooperation, production, performance or attendance" (the merit rating categories) (id. p. 12). The arbitrator added that the Company's position "seemed to be in conflict with the apparent assurance during the negotiations to the effect that relevant information that might help settle the grievance would not be withheld." Ibid.

We would add three other observations: First, that the Company's position conflicted with its "apparent assurance" that the 1971 amendment would not waive the union's statutory rights. The Company's attempt to use the language to achieve precisely that result establishes that when it became concerned that the Board might require to fulfill its statutory bargaining duties, it proceeded to try to water down those duties by exacting a contractual "waiver," going so far as "apparent" misrepresentation of its intention. Second, the Board should note the evidence in the Arbitrator's Decision as to how the Company tries to prevent the grievance machinery from working. Thus, the Company argued that there was no obligation upon it to produce foreman's records at Step 2 because the foreman was not the Company representative at Step 2 (id. p. 7), thus implying that its Step 2 representatives may properly keep themselves in ignorance of the underlying facts, although that posture assures that Step 2 meetings are bootless. The facts found by the arbitrator demonstrate to the

incredible disregard of statutory obligations to deal "in good faith," reflected in the Company's litigation position, is put into practice. When the union steward asked for the foreman's notebooks at Step 2, the Company's representative responded that "'he had no knowledge of any notebooks.'" Arbitrator's Opinion, p. 5. At Step 1 the foreman had falsely denied he had any notebooks. Id. p. 4. The Company condoned his lie, and adopted it. Third, as we have noted, the arbitrator stated that the Company's position before him was inconsistent with its "apparent" assurance to the unions in negotiations. His use of the term "apparent" to describe what is indisputable, is instructive. In order to determine the meaning of the contract, the finding of the "apparent" assurance was sufficient; moreover, arbitrators are institutionally constrained not to make findings of bad faith by one of the parties even when, as here, the record cries out for such a finding. On the other hand, a finding that the Company's position was deliberately inconsistent with prior assurances, while not necessary to a finding that the § 8(a)(5) has been violated, is highly relevant in determining the appropriate remedy; and the Board which sits to enforce norms created by Congress, may and indeed should determine and state when those norms have been consciously flouted.

What this record shows, then, is not merely an "individual dispute[] which . . . [is] likely to arise in the day-to-day relationship between employees and their immediate supervisors relating to merit ratings and other matters," (Pollack, p. 6), but a sustained, deliberate effort to undermine the contractual grievance machinery, which is part of the statutory bargaining process, by what the Arbitrator based "apparent" misrepresentations in negotiations, by withholding information without which 'No 'serious effort' can be made to resolve a difference . . .' and by turning grievance meetings into idle ceremonies. As the Board well knows,

without union access to relevant information, almost always in the employer's exclusive control, a working condition is nothing but a pious hope. The Supreme Court has pointed out that without union access to such information, needless controversies are generated, and the grievance-arbitration system breaks down. NLRB v. Acme Industrial Co., 385 U.S. 432.

The Company's course of conduct is a contemptuous violation of public law. No arbitrator's award can change it. Of course, the Company will comply with the arbitrator's award that it turn over the Pitney notebooks. But the Act which this Board administers demands more than compliance with specific arbitration awards. It demands compliance with the law, with the statutory injunction to "bargain in good faith . . ." lest unions be forced to strike to force employers to change policies which are operative across the board of, for example, denying unions every jot and tittle of information, however useful in settling "individual disputes," whenever an argument can be made for refusal.

That is the Company's approach to labor relations. For the Board to treat each manifestation of it as one of "innumerable . . . disputes" between supervisors and the individual employers they supervise, rather than as a reflection of Company policy, implemented by top company officials through litigation and contract negotiations, and by lower level supervisors on a day-to-day basis, leave the union no recourse except to engage in economic warfare to compel respect for the principle of collective bargaining. Yet the Board is under a "public duty" to prevent that contrempts. Arbitration awards cannot.

CONCLUSION

For the foregoing reasons, the Company's motion for summary judgment should be denied and the case should be promptly set for a hearing on the complaint.

Respectfully submitted,

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February 19, 1974

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Response to Respondent's Motion to Receive Additional Evidence and Charging Parties' Cross-Motion to Submit Additional Evidence has been mailed by first class mail, postage prepaid, this 19th day of February, 1974, to:

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213 NLRB No. 22

MFJKP

D-8872
East Hartford, Conn.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION;
HAMILTON STANDARD DIVISION)

and

Case 1--CA--7890

LODGES 700 and 743, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE
WORKERS, AFL--CIO

UNITED AIRCRAFT CORPORATION
(PRATT & WHITNEY DIVISION)

and

Case 1--CA--8626

LODGE 1746, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS,
AFL--CIO

DECISION AND ORDER

Upon a charge and amended charge filed on September 30, 1971, and June 18, 1973, respectively, in Case 1--CA--7890, by Lodge 700, International Association of Machinists and Aerospace Workers, AFL--CIO, and by Lodge 743, International Association of Machinists and Aerospace Workers, AFL--CIO; and a charge filed on October 16, 1972, in Case 1--CA--8626, by Lodge 1746, International Association of Machinists and Aerospace Workers, AFL--CIO (herein referred to collectively as the Unions), duly served on United Aircraft Corporation (Pratt & Whitney Division; Hamilton Standard Division) and United Aircraft Corporation (Pratt & Whitney Division) (herein called Respondent), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 1, issued a Complaint and Notice of Hearing on May 31, 1973,

Case 1-CA-8676, and on July 11, 1973, the Acting Regional Director issued an Order Consolidating Cases, Amended Complaint and Further Notice of Hearing against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (4) and Sections 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, Order Consolidating Cases, Amended Complaint and Further Notice of Hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, paragraph 8 of the amended ^{1/} complaint alleges, in substance, that commencing on or about June 7, 1972, and at all times thereafter, Respondent did refuse, and continues to refuse, to bargain collectively with, and accord full statutory recognition to, Lodge 1746, as the exclusive collective-bargaining representative of the employees in the appropriate unit in that: (a) On or about June 7, 1972, Respondent, after several requests, refused to provide employee James Rizner with the services and presence of a shop steward in connection with his grievance; and (b) on or about June 15, 16, July 3, and 20, 1972, and at all times thereafter, Respondent has refused to furnish to Lodge 1746 the standards used by foremen for merit ratings, as well as other information, records, reports, and notebooks made and maintained by Respondent which were relevant and necessary to the intelligent analysis and presentation of grievances by Lodge 1746 and to the proper functioning and normal operation of the existing contract grievance procedure, thereby preventing, frustrating, and limiting Lodge 1746's ability and capacity to effectively utilize said contract grievance procedure.

1/ Hereinafter referred to as the complaint.

Paragraph 9 of the complaint alleges, in substance, that since on or about July 1, 1971, and continuing to date, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of their rights as guaranteed in Section 7 of the Act, by pretext of enforcing plant rules concerning employee conduct on company time and property. Respondent has followed and applied and is continuing to follow and apply at its various plants a continuing, deliberate, and historical pattern of unlawful discrimination and harassment of the Unions' stewards, committeemen, officers, agents, and representatives in order to discourage, inhibit, disrupt, and limit said representatives, officers, and agents from freely and effectively engaging in protected activity and to otherwise degrade and disparage said agents, representatives, and officials and the Unions themselves in the eyes of the employees of Respondent, to wit: (a) since on or about July 1, 1971, and continuing thereafter, Respondent harassed union and shop stewards of Lodge 743 by subjecting them to excessively close surveillance and supervision and unreasonably and discriminatorily applied against them, because of their union status and activity, plant work rules relative to employee communications and conduct on company time and property; (b) since on or about July 1, 1971, Respondent harassed union and shop stewards of Lodge 743 because of their union status and activity by subjecting them to onerous jobs and undesirable working conditions; and (c) on or about April 14, 1971, Respondent lied to employees concerning the efforts and activities of Lodge 700 regarding the retirement of an employee for the purpose of undermining and degrading employees' support of Lodge 700.

With respect to paragraphs 10 and 11, the complaint alleges, in substance, that Respondent did on or about July 1, 1971, subject Albert Weingarten to onerous jobs and undesirable working conditions for the reason that he joined or assisted the

Union or engaged in other concerted activities, including service as a union steward, for the purpose of collective bargaining, or other mutual aid or protection.

The Respondent filed an answer to the complaint, admitting in part, and denying in part, the allegations therein, and submitting an affirmative defense. On July 25, 1973, the Respondent filed a Motion for Summary Judgment accompanied by a memorandum of law in support thereof, an affidavit, and exhibits, moving the Board for an order dismissing the complaint herein, retaining jurisdiction for the sole purpose of entertaining an appropriate and timely motion for further consideration on a proper showing that the disputes have not been resolved with reasonable promptness through grievance and arbitration procedures or that such procedures have not been fair and regular. Accordingly, the Respondent requests the Board to grant the Motion for Summary Judgment and dismiss the complaint in conformity with its decision in United Aircraft Corporation (Pratt & Whitney and Hamilton Standard Division), 204 NLRB No. 133. Subsequently, on August 3, 1973, the Board issued an order transferring the proceeding to the Board and a notice to show cause why the Respondent's Motion for Summary Judgment should not be granted. Thereafter, the General Counsel filed a response to the notice to show cause; the Unions filed an opposition to the Respondent's Motion for Summary Judgment; the Respondent filed a reply to the General Counsel's response to notice to show cause; the Respondent filed a request for special permission to file a motion to take official notice and receive new evidence, with an affidavit and an Arbitrator's Opinion and Award attached; and the Unions filed a response thereto requesting leave to file a cross-motion to receive new evidence, submitting an affidavit and memorandum.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

The thrust of the documents submitted by the Respondent allege that the disputes between the parties raised by the allegations of paragraph 8 of the complaint have

been resolved by arbitration and that, subsequently, the Respondent has taken affirmative action to comply with the Arbitrator's Opinion and Award insofar as it was found that the Respondent violated the collective-bargaining agreement. Accordingly, the Respondent, relying on the arbitration award (United Aircraft Corporation, supra; Collyer Insulated Wire, 192 NLRB 837; and Spielberg Manufacturing Company, 112 NLRB 1080), moves the Board to grant the Motion for Summary Judgment and dismiss the complaint, retaining jurisdiction for the sole purpose of entertaining an appropriate and timely motion for further consideration in the event that these disputes have not been resolved with reasonable promptness or that such procedures have not been fair and regular. Moreover, Respondent points up that no grievances were filed with respect to any of the allegations herein, and that when the Unions filed unfair labor practice charges, it treated the matters as grievances which were subsequently arbitrated.

The Unions oppose the Motion for Summary Judgment and emphasize that a hearing and a Board Order are necessary to properly remedy the violations contained in paragraph 8(b) of the complaint respecting relevant information necessary to the processing of grievances despite the arbitration award, ^{2/} since only the Board can properly remedy statutory violations; that the Respondent's position conflicted with Respondent's assurance in negotiations that the 1971 amendments to the contract would not waive the Unions' statutory rights; and that the Board should note the evidence in the arbitrator's decision establishing that the Respondent tried to prevent the grievance procedure from working and his statement that the Respondent's position was inconsistent with its apparent assurance to the Unions in negotiations.

2/ Without conceding that the award is dispositive, the Unions choose not to press paragraph 8(a) of the complaint.

The General Counsel takes no position with regard to the relief requested by Respondent, but notes that Respondent's "demonstrated hostility towards unionism" and a "pattern of discrimination against union stewards" and a "general pattern of anti-union hostility and discriminatory conduct" are designed to frustrate the Unions' lawful role as bargaining representative. We agree with Respondent.

As we noted in United Aircraft Corporation, supra, if there is effective dispute-solving machinery available, and if the combination of past and presently alleged misconduct does not appear to be of such character as to render the use of that machinery unpromising or futile, then we ought not to depart from our usual federal policies.

Turning to the instant case, we note specifically that the disputes between the parties raised by the allegations of paragraphs 8(a) and (b) of the complaint were submitted to and resolved by arbitration, in which it was found that (1) "[t]here was no violation of the agreement in the failure of [Respondent's foreman] to summon a shop steward pursuant to the request of employee James R. Rizner on June 7, 1972," and (2) "[t]he Company violated the agreement by refusing to produce, in the second step of the grievance procedure relating to the grievance filed on behalf of Kenneth R. Roberge, the notebooks maintained by [Respondent's foreman]."

We note that Respondent has taken affirmative action to comply with the arbitrator's award and has submitted an affidavit expressing its willingness to reconvene the second step grievance hearing and produce the notebooks maintained by the Respondent, thereby demonstrating not only that the Respondent is willing "to honor its contractual commitments dealing with procedures for dispute resolution," but also that "the parties' agreed-upon grievance and arbitration machinery can reasonably be relied on to function properly and to resolve the current disputes fairly." United Aircraft Corporation, supra.

The allegations set forth in paragraph 9(a), (b), and paragraphs 10 and 11 of the complaint involve a conflict between a single employee and his immediate supervisors, which occurred on or about July 1, 1971; the allegations of paragraph 9(c) involve the content of disputed conversations, between a single employee and his immediate supervisors occurring on or about April 14, 1971. As noted above, no grievances have ever been filed over these disputes. ^{3/} Thus, the allegations of paragraphs 9, 10, and 11 are essentially limited to isolated acts involving two employees, each of whom work at a separate plant. We note that the parties involved in United Aircraft Corporation, supra, and those involved herein are the same, and that the nature of the allegations contained in the instant complaint are also the same. Therefore, the only issue before us is whether the allegations of the instant complaint are subject to voluntary adjustment through the parties' grievance and arbitration provisions. We think that they are. All of the alleged acts of harassment and discrimination contained in paragraphs 9, 10, and 11 of the complaint, it seems to us, could also be resolved by the parties' grievance procedures, since there appears to be no question but that they are covered by the provisions of the contracts providing for arbitration on the request of either party if the dispute is not settled under the grievance procedures (the contracts with Lodges 700, 743, and 1746 have identical ^{4/} grievance and arbitration provisions).

We find that the Arbitrator's Opinion and Award satisfies the standards set forth in Spielberg Manufacturing Company, supra, and effectively disposes of the allegations of paragraph 8 of the complaint. Furthermore, we see no apparent reason why the

3/ By letter dated July 13, 1973, the Respondent invited the Unions to meet with it to resolve the dispute involving the allegations of paragraphs 9, 10, and 11, either through the existing grievance procedure or through a special dispute-solving mechanism to which the parties might mutually agree.

4/ See United Aircraft Corporation, supra, fn. 5.

remaining allegations contained in paragraphs 9, 10, and 11 thereof ought not to be resolved through the parties' agreed-upon grievance and arbitration procedures.

In a rec. to Supreme Court decision, the Court, citing Collyer Insulated Wire, supra, noted that "Board policy is to refrain from exercising jurisdiction in respect of disputed conduct arguably both an unfair labor practice and a contract violation taken . . . the parties have voluntarily established by contract a binding settlement procedure." See William E. Arnold Co. v. Carpenters, U.S. (May 20, 1974).

Therefore, having found that the parties' contractual grievance-arbitration process can, and does, function effectively and fairly and has continued to be utilized by the parties to their satisfaction, "[w]e believe it to be consistent with the fundamental objectives of Federal law to require the parties . . . to honor their contractual obligations rather than, by casting [their] dispute in statutory terms, to ignore their agreed-upon procedures." William E. Arnold Co. v. Carpenters, supra, citing Collyer Insulated Wire, supra.

The Remedy

Without prejudice to any party and without deciding the merits of the controversy, we shall grant Respondent's Motion for Summary Judgment and dismiss the complaint herein. We shall, however, retain jurisdiction for a limited purpose. In view of the fact that the parties have not resolved the allegations contained in paragraphs 9, 10, and 11 of the complaint, we cannot now inquire whether resolution of the dispute will satisfy the standards set forth in Spielberg Manufacturing Company, supra. In order to eliminate the risk of prejudice to any party, we shall retain jurisdiction over this dispute solely for the purpose of entertaining an appropriate and timely motion for further consideration on a proper showing that either (a) the dispute

D-8872

has not, with reasonable promptness after the issuance of the Decision here, either been resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (b) the grievance or arbitration procedures have not been fair and regular or have reached a result which is repugnant to the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board grants Respondent's Motion for Summary Judgment and hereby orders that the complaint herein be, and it hereby is, dismissed, provided, however, that:

Jurisdiction of this proceeding is hereby retained for the limited purposes indicated in that portion of our Decision and Order entitled "The Remedy."

Dated, Washington, D.C. *[Signature]*

Edward B. Miller, Chairman

Ralph E. Kennedy, Member

John A. Penello, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

3/ Collyer Insulated Wire, supra.

WERNER, TIGHE, AND JEWELL, dissenting:

This Board has found repeated instances where Respondent has committed violations of the Act which demonstrate its desire to frustrate employee rights. It is also clear that, since a difficult strike in 1960, Respondent has demonstrated an hostility toward unions, reflected by the lack of a stable relationship with the unions. Despite this record of prior unlawful conduct occurring in an atmosphere of union hostility, the majority has, over our dissent in United Aircraft Corporation, 204 NLRB No. 133 (1973), and again here, through the application of its Colliver doctrine, refused to decide issues concerning statutory rights and remedies under Section 8(a)(1), (3), and (5) of the Act, and, instead, required the parties to consider and determine through the contractual forum public rights which exist by virtue of the Act, independent of any contractual obligations.

We have set forth elsewhere the reasons for our disagreement with the Colliver policy of deferral and see no need to restate them here. Accordingly, we will content ourselves with the observation that the majority, once again,

⑤ United Aircraft Corporation, 139 NLRB 39 (1962), enfd. 324 F.2d 128 (C.A. 2, 1963); United Aircraft Corporation, 144 NLRB 492 (1963), enfd. 333 F.2d 819 (C.A. 2, 1964); United Aircraft Corporation, 181 NLRB 892 (1970), enfd. 434 F.2d 1198 (C.A. 2, 1970); United Aircraft Corporation, 173 NLRB 935 (1969), enfd. 440 F.2d 85 (C.A. 2, 1971); United Aircraft Corporation, 180 NLRB 278 (1969), enfd. 440 F.2d 85 (C.A. 2, 1971); United Aircraft Corporation, 188 NLRB 633 (1971); and United Aircraft Corporation, 192 NLRB 382 (1971).

⑦ In United Aircraft Corporation, 173 NLRB 935, 937, the Board found Respondent's conduct "demonstrated hostility towards unionism and proclivity towards violating the Act." On enforcement in 173 NLRB 935 and United Aircraft Corporation, 180 NLRB 278, the court found that the many unfair labor practices "follow a general pattern of anti-union hostility and discriminatory conduct." United Aircraft Corporation v. N.L.R.B., 440 F.2d 85, 100.

has rendered meaningless much of the justification used to support its Collyer policy, in particular its language to the effect that referral is inappropriate where there is a pattern of union animus and the lack of a stable relationship ^{8/} between the parties.

Unlike our colleagues, we did not see at the time of our dissent in 204 NLRB No. 133 any positive evidence of the maturation of the collective-bargaining relationship between the parties. Neither do we see any evidence here of progress toward that end. The misconduct by Respondent, if it occurred as alleged, would be a continuation of the pattern of conduct which has marked the relationship between the parties for more than a decade. Thus, it is alleged, inter alia, that Respondent refused to provide information relevant to the grievance-arbitration process and that it engaged in harassment of union stewards. The failure to provide information relevant to the grievance-arbitration process strikes at the very heart of the process itself and inhibits full and fair use of the process. Unlike our colleagues, we are not persuaded that Respondent's belated offer to provide the information which gave rise to one of the allegations—to comply with the arbitrator's award which found that Respondent

8/ In Collyer Insulated Wire, A Gulf & Western Systems Co., 192 NLRB 837, 842 (1971):

... this dispute arises within the confines of a long and productive collective-bargaining relationship. The parties before us have, for 35 years, mutually and voluntarily resolved the conflicts which inhere in collective bargaining. . . . [No] claim is made of enmity by Respondent to employees' exercise of protected rights.

In deferring to arbitration in National Radio Company, Inc., 198 NLRB No. 1 (1972), the majority distinguished that case "from those in which a history of [union] animus or pattern of action subversive of Section 7 rights has been alleged." The case cited for comparison by the majority in National Radio was United Aircraft Corporation, 188 NLRB 633.



violated the collective-bargaining agreement---demonstrates that Respondent is willing to honor its contractual commitments, or that the voluntary process is working. Rather, we see Respondent's refusal to provide the information so that the arbitrator could have made a finding on the merits in the first instance as further evidence of the unsatisfactory nature of the relationship which continues to exist between the parties. Neither, we submit, can anything positive be said for Respondent's continued harassment of union stewards.^{9/} In sum, it appears that this type of misconduct, similar to that in 204 NLRB No. 103 and the earlier cases, continues to permeate the relationship between the parties.

For the reasons set forth in our dissents in United Aircraft Corporation, 204 NLRB No. 103, and in Collyer and its progeny, and here, we would determine this proceeding in accordance with the statutory mandate requiring the Board ^{10/} to resolve unfair labor practices submitted to it.

Dated, Washington, D.C.

SE 37

John H. Fanning, Member

Howard Jenkins, Jr., Member

NATIONAL LABOR RELATIONS BOARD

^{9/} In United Aircraft Corporation, 188 NLRB 633, the Board found "the record shows that a pattern of discrimination against union stewards has been perpetrated by the Respondent in prior cases." Also see 180 NLRB 278, and 179 NLRB 935.

^{10/} We further would note that, for the reasons stated in our dissent in Southwestern Bell Telephone Company, 212 NLRB No. 53 (1974), we regard the reasoning of the Supreme Court in Alexander v. Gardner Denver Co., U.S. (1974), as more analogous and persuasive than William E. Arnold Co. v. Carpenters, U.S. (1974), on which our colleagues rely to support their Collyer view. See also the more complete exposition of this point in our dissent in Electronic Reproduction Service Corp., NLRB No. (1974).